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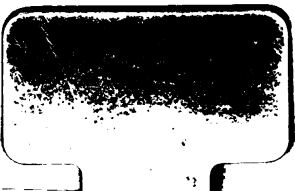
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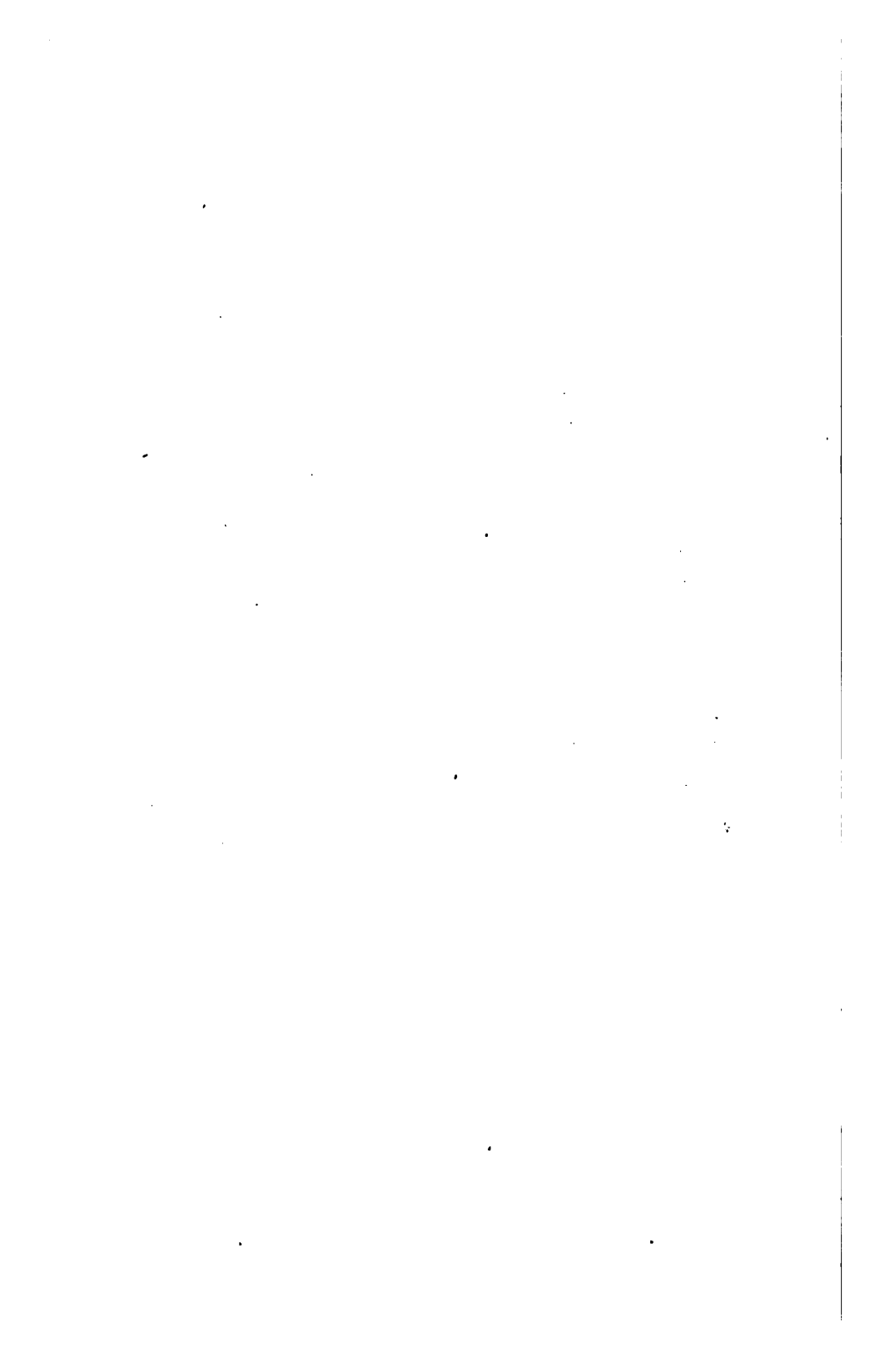
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EPITOME
OF THE
NOTES OF PRACTICE
OF
THE MAYOR'S COURT
OF THE CITY OF LONDON
IN ORDINARY ACTIONS.



BY
WOODTHORPE BRANDON, Esq.,
BARRISTER-AT-LAW.

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1871.

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P R E F A C E.

THE "Notes of Practice of the Mayor's Court," being now out of print, the Author has been requested to publish a Second Edition; but in consequence of some alteration in the practice and proceedings of the Mayor's Court being contemplated, he believes that it will be the preferable course to publish an Epitome of the Notes in a cheap form, until it is determined whether any alteration will be made as contemplated.

February, 1871.

P R E F A C E

TO NOTES OF PRACTICE, PUBLISHED IN 1864.

MANY of the provisions of the Common Law Procedure and other Acts having been applied to the Mayor's Court, the Author of the present work believes that a collection of them, with some notices as to their application to the present practice of the Court, may be deemed useful by the profession.

The Author has also endeavoured to point out where the peculiar jurisdiction and practice of the Mayor's Court necessarily creates a different method of practice from that of the Courts at Westminster; but, independently of this difference, the various decisions and the books of practice of those courts may generally be relied upon as a guide to the practitioner in the Mayor's Court.

The Author is aware that the present work must appear disjointed; but this arises from a desire to point out the difference of the practice of the Mayor's Court from that of other courts, rather than to make a sequential Practice of the Mayor's Court, which would be but borrowing very largely from the books of practice in use in other courts.

August, 1864.

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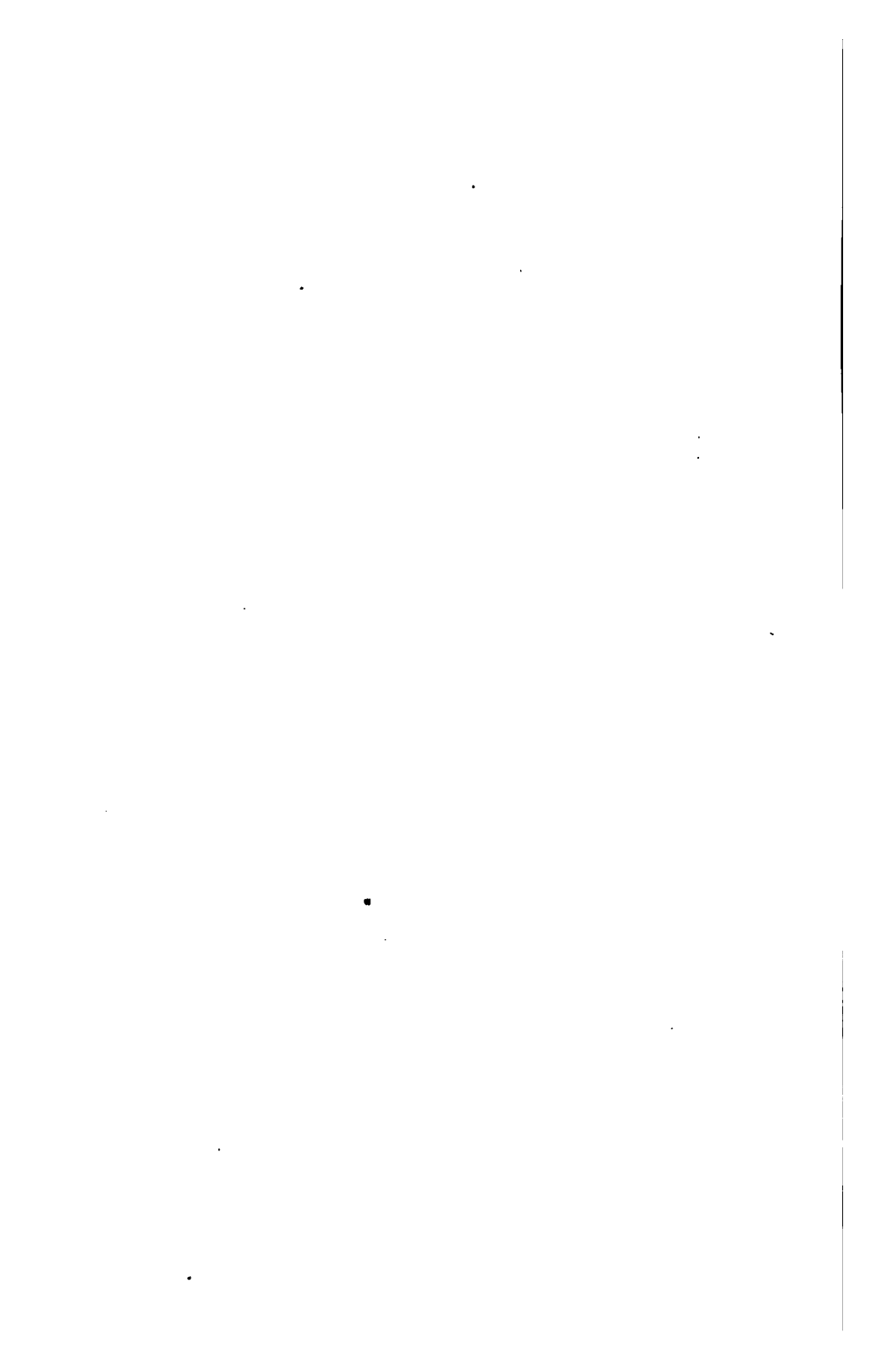


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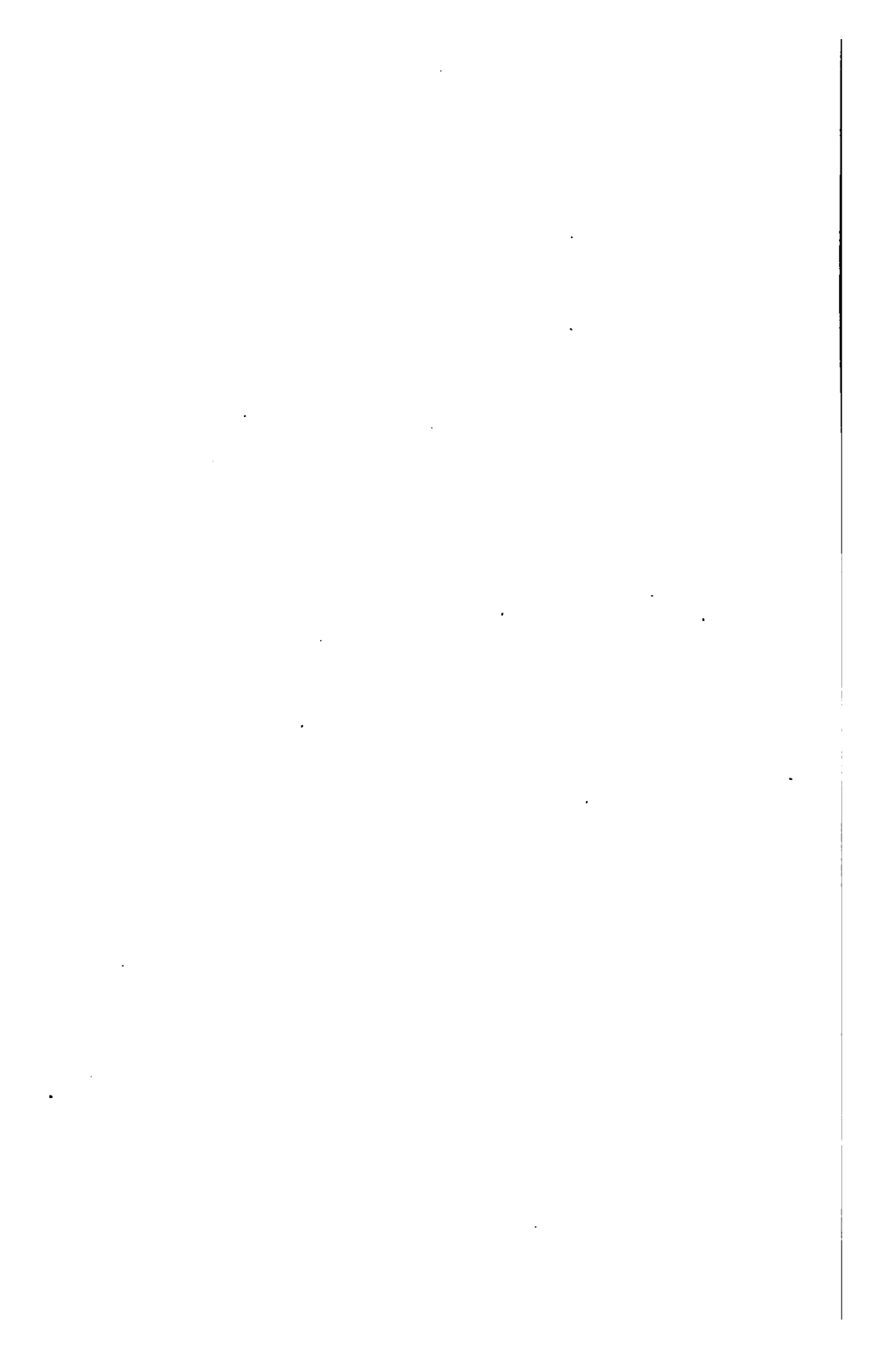
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CHAPTER I.

CONSTITUTION OF THE COURT.

- | | |
|---------------------|---------------|
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| 2. THE JUDGES. | 6. ATTORNEYS. |
| 3. THE REGISTRAR. | 7. JURY. |
| 4. SERJEANT-AT-LAW. | |

1. *The Court.*—The Mayor's Court, or, more properly speaking, the Court of our Sovereign Lady the Queen holden before the Mayor and Aldermen of the city of London, is one of the most ancient courts of the kingdom.

At a time when all suits and complaints were redressed by the local magistrates in their courts, and before the creation of any other species of court, and long before the existence of the courts at Westminster, the Portreeve of London held his court in the hustings, and there, with the assistance of other magistrates, administered justice and determined all matters of public importance relating to the town. The King's Court in London, in connection with the reeve, is mentioned in the years 675 to 685, if not at an earlier period.

The exact time at which this jurisdiction was parcelled out into different sections, which we now distinguish as the court still held in the hustings, commonly called the Hustings Court, and the Mayor's Court, does not very distinctly appear; probably it was about the reign of Henry the Third, from which period we have had "Pleas of Land," or "Common Pleas," relating to interests in land, "holden in the hustings," and the Mayor's Court holden in the Chamber of the Guildhall, as separate and distinct courts.

2. *The Judges.*—The Lord Mayor and all the Aldermen are the judges, the Recorder sitting by custom as the sole judge.

By the Mayor's Court Procedure Act 1857 (§ 43), in the absence of the recorder, the common serjeant may preside as judge, and in case of illness or unavoidable absence of both the recorder and common serjeant, they or either of them, or in case of their inability the Court of Common Council, may appoint a barrister who has practised at least seven years to act as a deputy during such illness or unavoidable absence.

3. *The Registrar.*—There is a Registrar and Deputy. The duties of the Registrar are to record all the proceedings of the court; and it appears that formerly he also sat as judge, assisting the recorder. By the Mayor's Court of London Procedure Act 1857, § 41, he has power, in the absence of the judge, to hold the court and transact all the business of the court except the trial of issues of law or in fact. This authority also extends to the provisions of the Common Law Procedure, and other Acts, applied to the Mayor's Court.—See Order, Queen in Council, Appendix No. 2.

The Registrar holds the court daily, as every day is a court day, and determines all matters which are generally brought before the judges of the superior courts at Chambers. The Deputy Registrar has all the powers of the Registrar.

He has also, under the Order of the Queen in Council, so far as regards matters and proceedings in the Mayor's Court, all the powers and duties exercisable by the Masters of the superior courts, or any number of them, under any of the sections of the several Acts applied to the Mayor's Court.

4. *Serjeant-at-mace*.—The court also has a Serjeant-at-mace, whose duty it is to serve the proceedings in attachments, and to execute the process of the court similarly to the sheriff in the superior courts, and has the same power as the sheriff under the sections of the Acts of Parliament applied to the Mayor's Court, as before mentioned.—See Order of Queen in Council.

By the 42d section of the Mayor's Court Procedure Act, the Debtors Prison of the city of London is made the prison of the court, and a fine is imposed upon the keeper of the prison allowing an escape, &c.

5. *Counsel*.—Formerly there were only four counsel attached to the court, but now, as this exclusive right has been abolished, any barrister may have audience.

Counsel have exclusive audience upon all trials, except of course when suitors appear in person to advocate their own causes; but this does not extend to collateral matters, upon which the court will allow attorneys to be heard.

6. *Attorneys and Solicitors*.—Any attorney or solicitor, duly admitted as an attorney or solicitor of one of the superior courts at Westminster, may sign the roll of the Mayor's Court, and practise therein; the fee for such admission is five shillings.

There are no peculiar rights or remedies in the Mayor's Court relating to the attorneys of the court, but they are governed generally by the same law as in the courts at Westminster.

The court can strike off the roll of the court any attorney or solicitor guilty of misconduct in the court, or may do so upon certificate of his having been struck off the rolls of any of the courts at Westminster or the Court of Chancery.

The 7th section of the Common Law Procedure Act 1852 applies to the Mayor's Court, and any attorney not declaring in writing the plaintiff's occupation and place of abode, as directed by that section, is guilty of a contempt of the court. As before observed, counsel have exclusive audience in court, and no attorney can be heard as an advocate upon the trial of issues of law and fact; but in matters collateral the court will hear the attorney in the cause as at chambers. It may here be observed, that the entry of plaint or appearance, or any proceeding taken in the name of or by an attorney not upon the roll of the court may be set aside or stayed.

In actions by attorneys in the Mayor's Court upon Bills of Costs, if the retainer is admitted, they are upon application referred to the Registrar, and the plaintiff is at liberty, within four days after taxation, to sign judgment for the amount of the *allocatur*, and if it be found that not any thing is due to the plaintiff, the defendant is at liberty to sign judgment for his costs. If the retainer is disputed, then upon application an order may be obtained to raise at the trial that question only, and in the event of the plaintiff obtaining a verdict, the bill is referred to the Registrar for taxation, and the plaintiff is entitled to judgment the day following the taxation. Any taxation is open to review by the court.

7. *The Jury*.—The jury drawn for the Mayor's Court is from the sheriffs' books. By Act of Common Council of the 22d September, 1853, it is directed that the persons to serve as jurors in the Mayor's Court shall be taken from the jurors book, kept by the secondary, of persons

returned under and pursuant to the provisions of a statute made and passed in the sixth year of the reign of his late Majesty George the Fourth, for consolidating and amending the laws relative to jurors and juries.

A special jury may be had upon application to the court, in which case the serjeant-at-mace obtains the panel from the secondary, and the jury, is struck before the serjeant, as in ordinary cases before a sheriff; they are summoned by the serjeant. Either party may obtain a special jury, and the judge upon the trial of the cause determines whether the cause is a proper cause to be tried by a special jury. The fine for non-attendance of a juror is a sum not exceeding Five pounds, and the fine is levied in the manner provided by the 5th and 6th Wm. IV. c. 76, § 121.—See Mayor's Court Procedure Act, § 49, Appendix No. 1.

The view by a jury in the Mayor's Court has always been by application to the court, similar to the practice adopted under the Common Law Procedure Act 1852, § 114.

By the 58th section of the Common Law Procedure Act 1854 an order may be obtained for the inspection by the jury of any real or personal property, the inspection of which may be material to the proper determination of the question in dispute.

CHAPTER II.

THE JURISDICTION OF THE COURT.

THE court is of a double capacity, possessing an equitable as well as a legal jurisdiction.

The equitable power of the court in ordinary suits is concurrent with that of the Court of Chancery; it is also used for the discovery of property in the garnishee's hands in foreign attachments, where such discovery cannot be obtained under the provisions of the statute. It has the exclusive right of awarding restitution of apprentice premiums in the city indentures of apprenticeship, and relieves were necessary by injunction, in proceedings on the law side of the court.

The common law jurisdiction of the court is concurrent with that of the superior courts at Westminster in all personal actions of contracts and torts, and also in ejectments, but it has no jurisdiction in replevin. It has exclusive jurisdiction over a variety of causes arising out of the city customs, as foreign attachments, sequestration, disfranchisement, apprenticeship, *feme sole* merchant, arrest for better security, in certain cases of defamation, and debt on *concessit solvere*, and in penal actions under Acts of Common Council, &c.

The jurisdiction of the court extends to any amount; but if a plaintiff recovers a sum not exceeding Five pounds in an action of contract, or Forty shillings in an action for a tort, he cannot recover any costs unless the judge certify to entitle him thereto; or if there is no verdict, then unless the court make an order to that effect.—See Mayor's Court Procedure Act 1857, § 11; and by the 34th section of the Common Law Procedure Act 1860, costs are not recoverable in actions for injury if the verdict is less than Five pounds, if the judge certifies. And by the 29th

section of the County Courts Amendment Act 1867, where any action or suit shall be brought in any other court than the superior courts of law which could have been brought in a county court, and the verdict recovered is for a less sum than Ten pounds, the plaintiff shall not recover from the defendant a greater amount of costs than he would have been allowed if the action or suit had been brought in such county court, unless the judge shall certify that the action or suit was a fit one to be brought in such other court.

It is immaterial where either plaintiff or defendant reside or carry on business, if the cause of action accrue within the city. By the Mayor's Court Procedure Act, however (§ 12, Appendix No. 1), in cases not exceeding Fifty pounds, the jurisdiction of the court cannot be questioned, provided the defendant, or one of the defendants, shall dwell or carry on business within the city of London or liberties thereof, at the time of the action brought, or within six months next before the time of the entry of the action.

The local jurisdiction of the court is the city of London and liberties thereof: but what is the jurisdiction of the court in respect to the enforcement of any contract is very difficult to determine. Undoubtedly at the early period of the history of the Mayor's Court, the portreeve held within his court and locality full criminal and civil jurisdiction. The criminal jurisdiction has been by degrees taken away or modified, until at last it is merged into the Court of Commission, commonly called the Central Criminal Court, with the portreeve or mayor still in authority as first commissioner. But there does not appear to have been any interference with the civil jurisdiction of the court, or any restriction of its original authority. It would be idle to contend that any question of jurisdiction as to the locality of any contract could possibly have existed at a period when local courts only were in being in this country; the presence of the person gave the court of the locality jurisdiction over him, and he was held to bail to compel his appearance at any future period, or at the hearing of the dispute; and this may be the reason of the maxim *debitum et contractus sunt nullius loci*. Indeed, it may be said to be the origin of bail, for as no court had jurisdiction beyond its locality, if a person were sued and passed into another locality he could not be seized under the process of the court of the first locality, but must be sued in the second, and so *ad infinitum*; but when he was delivered to bail, the duty of the bail was to see him forthcoming or pay the amount of the recovery.

The establishment of the superior courts at Westminster, with a common jurisdiction over all the several localities, and the facilities afforded to suitors over the necessary defective process of the local courts, together with the impositions and exactions extorted from suitors in many of the local courts, appear to have been the causes of introducing the 3d Edw. I. c. 35.

The courts therein comprised had their jurisdiction restricted to matters arising within their locality, under a penalty, and the Act appears to have been the origin of the writ of Prohibition, restricting the courts to matters within their local jurisdiction; but the Act does not apply to the London courts.

The civic charters appear to recognize the power of the court to entertain actions for causes arising out of the jurisdiction, and there is much collateral evidence showing that the court did exercise such authority.

From many circumstances however, unnecessary here to mention, the court has for some years past been considered an inferior court within the ordinary meaning of that term, and the court itself has considered it necessary to prove some jurisdiction, *i.e.* that some part of the cause of

action arose within the city, but not the whole. Under the customary count of *concessit solvere*, formerly no jurisdiction was averred (a), neither did the early records aver that any matter arose "within the jurisdiction." (b)

It will thus be seen that there is every difficulty in stating what is the jurisdiction of the court in this respect, and how far the consideration and promise must arise within the city. It has, however, been held that the court has jurisdiction in cases upon contracts made within the city, although the work contracted for is performed out; goods delivered in the city, the order having been given out of the city; or order for goods received in the city, and the goods sent out of the city.—See *Huxham v. Smith*, 2 Camp. 19. Also a promise within the city to pay an account arising out of the city, the amount being mentioned, or a promise to pay the account, the promise having reference to a specific account, containing the amount.—See also *Emery, v. Bartlett*, 2 Ld. Raym. 1555.

If it be necessary to give evidence of some matter arising within the city, probably the cases decided in the superior court, upon undertakings to give material evidence in counties to which the venue is changed, may be consulted with advantage.

Since the passing of the Mayor's Court Procedure Act, this question has somewhat been changed; as prior to that Act, if a plaintiff averred jurisdiction, and the defendant pleaded never indebted, he was bound to prove some jurisdiction; but by the 15th section of the Act referred to; unless the defendant plead to the jurisdiction, he cannot object afterwards to any want of jurisdiction, and if the defendant plead to the jurisdiction, he must plead to the whole of the cause of action, "and that the supposed causes of action, and each and every of them, arose out of the jurisdiction," so that at all events even if jurisdiction must still be shown, if any part of the cause of action arises within the city the plea must fail.—See Plea to the Jurisdiction.

In cases where the debt or damage claimed in any action does not exceed the sum of Fifty pounds, no plea to the jurisdiction is allowed if the defendants or one of them dwells or carries on business within the city or liberties at the time of the action brought, or shall have so dwelt or carried on business at some time within six months next before the time of the action brought, or if the cause of action, either wholly or in part, arose therein. (Mayor's Court Procedure Act, 1857, § 12.) When it appears by affidavit that the cause of action arose within the jurisdiction of the court, the court may order the plaint to be served in any part of England or Wales. (Mayor's Court Procedure Act §§ 13, 14.)

The Queen in Council has the power, under the 46th section of the Mayor's Court Procedure Act, to direct all or any of the provisions of any Act of Parliament for the amendment of the law, and any rules framed in pursuance thereof, to apply to the Mayor's Court. There are similar provisions also in specific Acts of Parliament, applicable to courts of record in general.—See Common Law Procedure Acts 1852, 1854, 1860; Summary Procedure Bills of Exchange Act.

Independently of the inherent authority of the court or judge over all proceedings of the court, it has some special authority given by Act of Parliament.

(a) See Turbill's case, 1 Wms. Saunders, 69, 2

(b) It has now by the case of the Mayor of London v. Cox, H.L., 36 Law J. Reports Exch. 295, been decided that the Mayor's Court is an Inferior Court; the decision, however, is very unsatisfactory, as it is decided upon the dicta of Judges upon collateral issues, the question of the jurisdiction itself never before having been raised by the Court, and the facts and arguments urged on behalf of the jurisdiction founded on the history and constitution of the Court, as before spoken of, are not only not answered, but not alluded to.

By the Mayor's Court Procedure Act 1857, it has power to make rules, orders, and regulations in respect of the offices of the Mayor's Court, and the nature, duties, fees, and emoluments attaching to the officers of the court, § 45. It has by the same Act also power from time to time to make rules for regulating the practice and pleadings; but such must, under this Act, be confirmed by three of the judges of the superior courts, *ibid.* But by the Order of the Queen in Council, the court has power to make and alter rules, and the forms of writs and proceedings, without the approval of any of the judges of the superior courts.—See Common Law Procedure Acts 1852, §§ 223, 224, 225; Act of 1854, §§ 97, 98; Act of 1860, §§ 37, 38.

The Order in Council directs that all the powers and duties exercisable by the court or a judge, or any number of judges, under any of the sections of any of the acts directed to apply to the said Mayor's Court, shall, as regards matters and proceedings in the said Mayor's Court, be exercised or exercisable by the court, as directed to be held by the Mayor's Court of London Procedure Act 1857.

CHAPTER III.

OF THE ACTION AND SERVICE.

ALL actions in the Mayor's Court are commenced by plaint or bill original without writ (*a*), and there is no limit to their duration unless by discontinuance or through proceedings taken to force on the plaintiff to judgment, &c.

An action is commenced by entering in the court a note in the Form No. I., containing the date of the entry, the names of all parties to the suit, and their representative character, if any, with the amount sought to be recovered.

The joinder of parties to the suit is regulated by the same rules governing the joinder of parties to the suit in the courts at Westminster; a reference, therefore, to the general law and practice of those courts will enable the practitioner to determine the parties to be inserted in suits in the Mayor's Court (*b*).

Causes of action of whatever kind, provided they be by and against the same parties, and in the same rights, may be joined in the same suit, but this does not extend to ejections.—See Common Law Procedure Act 1852, § 40, 41, applied to the Mayor's Court.

An exact copy of the note of action must be prepared, and there must be thereunder a notice (see Form No. II.) containing a full description of the plaintiff's claim, from which the defendant may fairly understand for what the action is brought. If they are not sufficiently clear and an application is made for better particulars within the time allowed for appearance, and it is ordered by the court, if the defendant pay the

(a) Except in Ejection, under the sections of the Common Law Procedure Act.

(b) See *post*, Misjoinder and nonjoinder of parties, and Nonjoinder of defendant out of jurisdiction.

sum sought to be recovered upon the delivery of such better particulars, no further costs than the costs of the plaint and service will be allowed to the plaintiff.

It will be observed that the notice at the foot of the action is similar to the special endorsement under the Common Law Procedure Act 1852, § 25. It has always been in use in the Mayor's Court, and may be considered in the place of a special endorsement under that Act; indeed it may be said that all causes in the Mayor's Court are specially endorsed. All causes of action contained in the 25th section of the Common Law Procedure Act 1852, might always have been sued for upon the *concessit solvere* in the Mayor's Court, and judgment signed at the expiration of the eight days without further notice, which judgment is a final judgment.

If the amount claimed in the plaint is more than is due, the defendant may apply to stay proceedings on the payment of the amount due.—See Discontinuance; Stay of Proceedings.

An amendment of a mistake in the plaint will be allowed upon such terms as the court may direct.

The sealed copy plaint and notice should be personally served upon the defendant in ordinary cases within the jurisdiction of the court, that is, within the city of London.

If the cause of action arise within the jurisdiction, the court has power to order that the plaint may be served in any part of England or Wales (Mayor's Court Procedure Act 1857, §§ 13, 14). For this purpose an application may be made, *ex parte*, supported by affidavit "that the cause of action arose within the jurisdiction of the court," or stating the facts of the case, showing some circumstances giving the court jurisdiction, upon which, if deemed satisfactory, an order will be made for service out of the jurisdiction, and a copy of such order must be served with the sealed copy action. If, however, the plaintiff wants further costs than the ordinary costs, the affidavit must show the residence of the defendant to be out of the jurisdiction, and that he does not carry on business within the jurisdiction, and that he cannot be found within it to be served. (See suggested Affidavit, Form No. III.) Upon this being made to the satisfaction of the court a larger amount of costs will be allowed, which costs are marked on the plaint at the time the order is granted for service out of the jurisdiction, but 1*s.* only in actions under Ten pounds.

If the defendant cannot be served personally, the plaintiff may apply for substituted service. To obtain this it is necessary to call upon the defendant, and endeavour to serve him personally; if the defendant cannot be found, the sealed copy action should be left at his abode or place of business, and if no appearance be entered within the prescribed time from the leaving the copy action, and it be shown to the satisfaction of the court either that the plaint has come to the knowledge of the defendant, or that he wilfully evades service of the same, and that reasonable efforts have been made to effect personal service, the court will, upon an affidavit of the facts (see suggested Affidavit, Form No. IV.), order that a second copy of the action sealed as before, together with a copy of the order, and also a copy of the order giving leave to serve the plaint out of the jurisdiction of the court in cases where the service is to be made out of the jurisdiction, be left at his residence or place of business, and that if he do not appear within a time limited by the order upon proof thereof, the plaintiff may proceed as if personal service had been effected.

Where a defendant has personally admitted the receipt of the copy action, judgment will be allowed after the expiration of the proper time for appearance upon proof of such admission, in case no appearance is entered, without an order for substituted service.

Plaints against corporations may be served on the mayor or other head officer, or on the town clerk, treasurer, or secretary of such corporation.

If the defendant have not sent notice (sealed with the seal of the court) of his having entered an appearance within the time allowed for appearance after personal service, or in case of substituted service within the time limited by the order, the plaintiff's attorney may, without any search for appearance, sign judgment; if, however, he receives the notice of appearance in time to save signing the judgment, that will be sufficient.

Service of a copy action without being sealed, or service of a sealed copy action out of the jurisdiction of the court, without an order first obtained, granting leave for that purpose, is irregular, and must be objected to within the eight days allowed for appearance; but if an appearance be entered by the defendant upon a plaint so served, he cannot afterwards object to the irregularity.

CHAPTER IV.

OF THE APPEARANCE OF DEFENDANT AND DEMAND OF DECLARATION.

AFTER the defendant has been served with the copy action and notice, he has eight days exclusive of the day of service to appear in ordinary actions, and if the eighth day fall on a Sunday or other day upon which the office of the court is closed, the plaintiff is still entitled, in case of no notice of appearance, to sign judgment on the Monday, or morning next following the day the office was so closed. So also upon substituted service, where the last day to appear falls on a Sunday, &c.—See as to Service and calculation of time to appear in actions under the Bills of Exchange Act, and in actions of Ejectment, Chapters XVII. and XVIII.

The appearance waives all irregularity in the service of the plaint. The defendant may apply for an order for particulars of plaintiff's demand, or for the plaintiff's address, without first entering an appearance, provided the application be made within the time allowed for appearing. So also, where he is desirous of staying plaintiff's proceedings upon payment of a lesser sum than the amount sued for, he may make application to stay proceedings upon payment of the amount he admits to be due.—See *Action and Service, ante, p. 6.*

The appearance is entered by lodging in the office of the court a *præcipe* in the Form No. V. filled up, and notice of the appearance must be sent to the plaintiff's attorney in the Form No. VI. This notice must be sealed with the seal of the court, and is stamped at the time of entering the appearance; it is sufficient if it be served on the plaintiff's attorney before the expiration of the time allowed for appearance, or at any time before judgment is signed, provided it is delivered in time to prevent judgment being signed. Notices of appearance may be sent by post. If the appearance be entered and no notice sent, or if the notice sent be not sealed, it is a nullity, and the plaintiff is entitled to sign judgment. Care should be taken in this respect, as in case of neglect of either of these

requisites, and the plaintiff's attorney sign judgment for want of appearance, the defendant will have to apply to the court to set aside the judgment, and, if acceded to, it will be upon an affidavit of merits, unless under very special circumstances, and upon payment of costs. The defendant, or all the defendants if more than one, should enter an appearance.

It seems that one of several partners has no implied authority to enter an appearance for the others.

Every appearance by the defendant in person should give an address, at which it is sufficient to leave all pleadings and other proceedings not requiring personal service, and if such address be not given the appearance will not be received; and if an address so given should be illusory or fictitious, the appearance will be irregular, and may be set aside by the court.

Care should be taken that the entry of appearance corresponds with the plaint, or it may be treated as a nullity if there be a substantial variance, or amended at the cost of the defendant.

If a defendant has been sued by a wrong name he may appear in that name, or by his correct name, which is the better method, stating in the appearance and notice that he was sued in the wrong name. The plaintiff may continue his proceedings in the wrong name, the plaint having been so entered, but the defendant may then plead, as the appearance was entered, by the right name, adding, "sued as," &c., or the plaintiff may after the appearance apply to amend his plaint by altering the wrong name into the correct one. As to enforcing undertaking by attorney to appear.—See *ante*, Attorneys, p. 2.

Immediately the defendant has appeared and given notice thereof, the plaintiff is entitled to deliver his copy plaint, or declaration (a), but if he do not do so the defendant may demand the declaration (see Form No. VII.), and if the plaintiff do not deliver his declaration within four days after the demand, exclusive of the day of the demand, the defendant may sign judgment for want of prosecution (b), unless further time has been given by the court to the plaintiff for that purpose.

Imprisonments are abolished. No appearance of the defendant need be entered upon the record.

All actions in the Mayor's Court are specially endorsed within the meaning of the Common Law Procedure Act 1852, and the 33d section of that Act is applied to the Mayor's Court, therefore the proceedings taken under that section, where some of the defendants appear, may be had in the Mayor's Court.

(a) It probably will be more convenient hereafter to term the copy plaint "Declaration."

(b) *Vide* Judgment by default.

CHAPTER V.

DECLARATION AND DEMAND OF PLEA.

AFTER the defendant has appeared, the plaintiff is entitled to deliver a copy of his bill original, *i.e.*, a copy of that which is supposed to have been made up at the time of the entry of the action: it must correspond in every particular with the entry of the plea, otherwise it will be liable to be set aside as irregular; the plaintiff, however, may apply to amend his plea, if in continuing his proceedings he discovers any error.

If one of several defendants appears only, the plaintiff cannot declare until the other defendants have appeared or have suffered judgment by default.—See Judgment by Default.

Causes of action may be joined in the same suit as under the Common Law Procedure Act 1852, § 41.

The customary count very generally used in the Mayor's Court, is called the count *sur concessit solvere*. Formerly it was held in the Mayor's Court, that wherever a declaration could be framed in the superior courts, in which the plaintiff could recover for a cause arising *ex contractu*, the *concessit solvere* would lie (*a*); but within the last few years this has been very much qualified, and it is not now safe to consider it any more than a general *indebitatus assumpsit* count, embracing all debts and demands of a liquidated nature, including bills of exchange and promissory notes, whatever the position of the parties may be to those instruments: thus, it will lie in an action by drawer or any subsequent indorsee against the acceptor or maker, or against the payee, or drawer, or maker, by any remote indorsee. Suitors, however, are not restricted to this count, but the forms in Schedule B of the Common Law Procedure Act 1852 may be adopted, and in framing the declaration where the *concessit solvere* is not used, regard must be had to the various provisions of that Act relating to pleadings in general which apply to the Mayor's Court.—See Order of Queen in Council, Appendix No. 2.

The form of the count *concessit solvere*, and various forms of commencement and conclusions of declarations, and statements of causes of actions in ordinary cases, will be found in the Forms, No. VIII.

The copy declaration should be served on the defendant's attorney, or on the defendant himself, if he defend in person, and separate copies delivered where separate attorneys appear; and it may be delivered immediately or at any time after the defendant has appeared, although within the eight days; but the defendant is not bound to plead until a demand of plea be given, which may be endorsed on the copy declaration or delivered separately at a future time; but no judgment can be signed for want of a plea without this demand; the demand (see Form No. IX.) is a four-day demand, exclusive of the day on which it is given.

The plaintiff's warrant of attorney, formerly required to be entered in the margin of the declaration, is now abolished. So also the defendant's impleance and continuances generally.

The court has power to order interrogatories to be delivered to the

(a) Vallant MSS. Cases in the Mayor's Court.

defendant with the declaration, as under the Common Law Procedure Act 1854.—See Interrogatories, Discovery, &c.

Particulars of demand must be delivered with the declaration, where such particulars can be comprised within three folios; and where the same cannot be comprised within three folios the plaintiff must deliver such a statement of the nature of his claim and the amount of the sum or balance which he claims to be due as may be comprised within that number of folios; and if any declaration be delivered without such particulars or statement, and the court should afterwards order a delivery of particulars, the plaintiff will not be allowed any costs in respect of any application to obtain such order or of the particulars he may afterwards deliver; and a copy of the particulars of demand must be annexed to every record at the time it is entered for trial. The plaintiff is not bound by the particulars set out in the notice at the foot of the plaint, but if they differ when delivered from those in the plaint, and the defendant should pay on delivery of the particulars in the action, the court on application will direct the defendant to pay the costs of the plaint and service only, if it should appear that the defendant was prevented from sooner settling the action, by reason of the erroneous statement of the plaintiff's demand.

If an action is entered against a defendant in a wrong name, and he appears in his right name, "sued as, &c.," the plaintiff may deliver his copy declaration in the wrong name, as it was originally entered, leaving the defendant to deliver his plea in the right name, "sued as," &c. or upon the appearance being entered as mentioned, the plaintiff may apply to amend, by altering the wrong name into the right one.

PLEADINGS IN GENERAL.

And see Amendment, Nonjoinder, Misjoinder, Equitable Defences, Interrogatories.

THE following sections of the Common Law Procedure Act 1852, are applied to the Mayor's Court.

Section 49.—Fictitious and needless averments not to be made.

Section 50.—Judgment upon demurrer to be given according to the very right of the cause.

Section 51.—Objections by way of special demurrer taken away.

Section 52.—Pleadings framed to embarrass may be struck out or amended.

Section 53.—Four days' notice substituted for rule to declare, reply, or rejoin.

Section 54.—Pleadings to be dated and entered as of time of pleading, unless order to the contrary.

Section 55.—Profert and Oyer abolished.

Section 56.—Document may be set forth, and be considered a part of the pleading in which it is set forth.

Section 57.—Performance of conditions precedent may be averred generally.

Section 60.—Commencement of declaration after plea of nonjoinder.

Section 61.—Declaration for libel or slander.

Section 64.—Express colour abolished.

Section 65.—Special traverses abolished.

Section 66.—Formal commencement and prayer of judgment unnecessary.

Section 77.—Traversal of plea or subsequent pleading of defendant.

Section 79.—Joinder of issue.—See Form in Schedule to Act.

Section 80.—As to pleading and demurring together.

- Section 87.—One new assignment only allowed in respect of the same cause of action.
- Section 89.—Form of demurrer and joinder in demurrer.
- Section 91.—Forms in schedule of Act may be adopted; and see Form No. VII.
- Section 96.—Saving as to certain provisions of 8 & 9 Wm. III. c. 11.
- Section 143.—Upon motion in arrest of judgment, pursuant to 1 Wm. IV. c. 7, or for judgment *non obstante veredicto*, omitted facts may by leave of the court be suggested (*b*).
- Section 144.—Judgment to follow result of suggestion.
- Section 145.—Costs of abortive issues.

And see other sections, chapter VI.

The party demurring may give a notice to the opposite party to join in demurrer in four days, which notice may be delivered separately, or endorsed on the demurrer, otherwise judgment.

When there shall be a demurrer to part only of the declaration or other subsequent pleading, those parts only of the declaration and pleading to which such demurrer relates shall be copied into the demurrer book; and if any other parts shall be copied, the Registrar will not allow the costs thereof on taxation, either as between party and party, or as between attorney and client.

The signature of counsel is not required to any pleading.

CHAPTER VI.

OF THE DEFENDANT'S PLEA, AND DEMAND OF REPLICATION, ETC.

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| 1. PLEA IN GENERAL. | 5. <i>Nunquam indebitatus</i> , TO COUNT OF <i>Concessit solvere</i> . |
| 2. SECTIONS COMMON LAW PROCEDURE ACT 1852, APPLIED TO MAYOR'S COURT. | 6. PLEADING SEVERAL MATTERS |
| 3. SET-OFF. | 7. PAYING MONEY INTO COURT WITH PLEA. |
| 4. EQUITABLE DEFENCES | 8. PLEA TO THE JURISDICTION. |

1. *Plea*.—A defendant is not bound to plead without a demand of plea; this may be endorsed on the declaration or served separately. In all cases it is a four-day demand, exclusive of the day of the demand, and where the last day to plead falls on a Sunday or other day upon which the office of the court is closed, the defendant has the whole of the following day to plead. If the defendant do not plead within that time the plaintiff may sign judgment for want of a plea, but time to plead may be obtained upon application in the usual manner for similar orders. The notice of application for time should be returnable before the time to plead has expired, as the mere notice of application for time to plead is

(b) See this section as altered in its application to the Mayor's Court. Order Queen in Council, Appendix No. 2.

not a stay of proceedings; therefore, when through accident the defendant's time to plead will expire before the return of the notice of application for time to plead, leave should be asked *ex parte* to allow it to be returnable at ten o'clock, to save the plaintiff signing judgment; this will be allowed, if any cause can be shown why it was not given before, and the permission having been given must be stated in the notice, or it may be treated as a nullity. A defendant is allowed the same time for pleading after the delivery of particulars, under an order which he had at the return of the notice for particulars, unless otherwise provided for in such order.

When an order is made for further time to plead, and it is intended that such time should not begin to run until after the delivery of particulars, it should be clearly so expressed in the order. In giving time to plead, the court will when necessary, as in the superior courts, put the defendant under terms as to notice of trial, &c.

The time for pleading in bar and abatement is four days.

If the defendant plead to the country, the plaintiff may reply simply by adding the *Similiter*. Of this he may give immediate notice to the defendant's attorney, as "Take notice, I have joined issue herein." No other issue is made up, but there is no time limited to give this notice. If, however, the defendant's attorney demand a replication, then the plaintiff must reply, or the defendant may obtain judgment for want of prosecution. If the defendant obtain an order for time to plead, and delivers his plea before the time so given him, he may immediately thereupon demand a replication of the plaintiff although the time to plead has not expired; but when necessary, time to reply may be obtained on application. If the defendant's attorney do not demand a replication, the plaintiff's setting his cause down for trial, and giving notice of his having done so, is equivalent to giving notice of having joined issue, and it is unnecessary to give other notice of having done so; or he may say "Take notice, I have joined issue herein; and further, take notice of trial," &c.

Every plea must be dated the day of delivery and signed by the attorney with his address, or by the defendant if he appears in person, and with his address, otherwise it may be treated as a nullity, and the plaintiff is at liberty to sign judgment; but, if the plaintiff reply or join issue thereon, it cannot afterwards be objected to. If the plaintiff's attorney is aware that there is a defence to the action, and judgment is so signed, no costs of the judgment will be allowed on an application to set it aside, if supported by an affidavit of merits, unless the plaintiff's attorney has pointed out the defect and given the defendant time to cure it; but if the plaintiff's attorney has good reason to believe that the plea is pleaded only for delay, then no such application need be made by him to the defendant, and the court will not set aside the judgment unless upon an affidavit of merits and payment of costs.

A defendant may at any time withdraw his plea by consent of the plaintiff's attorney; but if this is withheld, then it can only be done by leave of the court.

If a defendant be sued in a wrong name, and he appears in his right name, "sued as," &c., and the plaintiff continues the wrong name in the declaration, the defendant should plead in the right name, "sued as," &c. —And see Amendments, Nonjoinder, Misjoinder, and Pleadings in General.

2.—The following sections of the Common Law Procedure Act 1852, are applied to the Mayor's Court. See Appendix, No. 2.

Section 49.—Fictitious and needless averments not to be made.

Section 50.—Judgment upon demurrer to be given according to the very right of the cause.

Section 51.—Objections by way of special demurrer taken away.

Section 52.—Pleadings framed to embarrass may be struck out or amended.

Section 53.—Four days' notice substituted for rule to declare, reply, or rejoin.

Section 54.—Pleadings to be dated and entered as of time of pleading, unless order to the contrary.

Section 55.—Profert and Oyer abolished.

Section 56.—Document may be set forth, and be considered a part of the pleading in which it is set forth.

Section 57.—Performance of conditions precedent may be averred generally.

Section 54.—Express colour abolished.

Section 65.—Special traverses abolished.

Section 66.—Formal commencement and prayer of judgment unnecessary.

Section 67.—Commencement of plea, and no formal conclusion necessary.

—See Forms No. IX. and in Schedule to Act.

Section 68.—Plea of matter subsequent to action.

Section 69.—Plea *Puis darrein continuance*, when and how to be pleaded (a).

Section 70.—Payment into court in certain actions.

Section 71.—Payment into court how pleaded.—See Forms No. X. and in Schedule to Act.

Section 74.—Pleas to actions partaking both of breach of contract and wrong.

Section 75.—Pleas of payment, set-off, and other pleadings which can be construed distributively, shall be so construed.

Section 76.—Traverse of the Declaration.

Section 78.—Traverse of Replication, or subsequent pleading of the plaintiff.

Section 79.—Joinder of issue.—See Form in Schedule to Act.

Section 80.—As to pleading and demurring together.

Section 88.—Pleas not to be repeated to new assignment except a plea in denial, unless by leave of the court.

Section 89.—Form of Demurrer and Joinder in demurrer.—See Forms in Schedule to Act.

Section 91.—Forms in Schedule B may be adopted.—See Forms in Schedule to Act, and No. X. See Pleadings in General, Nonjoinder and misjoinder.

3. *Set-off*.—With every plea of set-off (see Forms No. X.), the defendant must deliver particulars of his set-off, and if any plea be delivered without such particulars, and the court afterwards order the same, the defendant will not be allowed any costs in respect of any application for such order or of the particulars he may afterwards deliver. If the defendant pleads a set-off and fails to deliver particulars of the same with it, the plaintiff may make application for an order that the defendant do deliver them: the order requires the particulars to be delivered within a certain time, otherwise the defendant will not be allowed to give evidence of it at the trial.

(a) This section is to be read as if the words "and such plea may, when necessary, be pleaded at Nisi Prius between the 10th August and 24th October," had not been inserted.—*Vide* Order in Council, Appendix No. 2.

The following sections of the Common Law Procedure Act 1860, have been applied to the Mayor's Court.—See Appendix No. 2.

Section 20.—Defendant to have benefit of set-off, though some plaintiffs improperly joined.

Section 21.—No other action for same claim to be brought.

4. *Equitable Defences*.—The following sections of the Common Law Procedure Act 1854, are applied to the Mayor's Court.—See Appendix No. 2.

Section 83.—Equitable defence may be pleaded.

Section 84.—Equitable defence after judgment.

Section 85.—Equitable replication.

Section 86.—Court or judge may strike out equitable plea or replication.

5.—*Plea to Concessit solvere*.—If the plaintiff have declared upon the *concessit solvere*, the plea to be used is "Never indebted."—Forms No. X.

The plea will operate as a denial of those matters of fact from which the liability of the defendant arises; *exempli gratia*, in actions for goods bargained and sold, or sold and delivered, the plea will operate as a denial of the bargain and sale or sale and delivery, in point of fact. In the like action for money had and received it will operate as a denial both of the receipt of the money and the existence of those facts which make such receipt by the defendant a receipt to the use of the plaintiff; and on bills of exchange and promissory notes, the drawing, making, or endorsing, or accepting; but if the defence be for other matters, as not presenting or not giving notice of the dishonour, or no consideration, notice thereof must be given of such defence with the plea; but such defences as bankruptcy or statute of limitation, &c., must be pleaded.—See Appendix No. 3.

Payment and set-off must be pleaded specially, they cannot be given in evidence under *nunquam indebitatus*.

6. *Pleading several matters*.—The defendant may plead together any pleas without leave of the court. The plaintiff, however, is at liberty to apply to the court in the usual manner to strike out such as he may deem objectionable. Either party may by leave of the court demur as well as plead, at the same time.

7. *Paying Money into court*.—The defendant, in all actions except actions for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, criminal conversation, or debauching the plaintiff's daughter or servant, and, by leave of the court upon such terms as it may think fit, one or more of several defendants, may pay into court a sum of money by way of compensation or amends; the Act to amend the law respecting Defamatory Words and Libel, 6th and 7th Vict., is not, however, repealed.

Where the money is paid into court by a sole defendant, no rule is required on paying it into court, but it is so when paid in by one or more of several defendants.

The money is paid to the Registrar, and the receipt marked in the margin of the plea, and the amount is paid out to the plaintiff or to his attorney upon production of the plea.

The plaintiff, after the delivery of a plea of payment of money into court, if paid in to the whole declaration, is at liberty to reply to the same by accepting the sum so paid into court in full satisfaction and discharge; and he is at liberty in that case to tax his costs of suit, and, in case of non-payment thereof within forty-eight hours, to sign judgment for his costs of suit so taxed, together with the costs of the signing judgment which are marked at the time of signing judgment, without

further notice to defendant. If the money is paid in to the whole declaration, and the plaintiff reply that the sum paid into court is not sufficient to satisfy the plaintiff in respect of the matter to which the plea is pleaded, in the event of an issue thereon being found for the defendant, the defendant is entitled to judgment and his costs of suit, from the delivery of the replication.

If the money is paid into court to part of the declaration only, and the plaintiff determines on accepting it, he should reply acceptance as to part, and *Nolle prosequi* as to the remainder; he will then have his costs on the payment into court, and pay the defendant on the *Nolle prosequi*.

If he determine to proceed to trial on the pleas generally, then he should reply that the amount is not sufficient to satisfy his claim, and also reply to the other pleas, or he may take the money out as to the causes on which it is paid in and reply to the other pleas; but in such case he cannot tax his costs as to that part of the cause of action to which the money is paid into court until the end of the suit.

If the defendant succeed on the pleas of payment into court, then he is entitled to his costs after replication as before, and on the other pleas, costs commencing with instructions for pleas. If money is standing to the credit of a cause, having been paid in in lieu of bail in dissolution of an attachment, application may be made by the defendant to the court to transfer such part as he may think necessary as paid in with the pleas. Where money is paid into court in several actions which are consolidated, and the plaintiff without taxing costs proceeds to trial in one and fails, he will be entitled to costs in the others, up to the time of paying money into court.—As to forms of pleas, see Forms No. X.

8. *Plea to the Jurisdiction (b)*.—The jurisdiction of the court can only be objected to by a defendant by plea; but this plea cannot be pleaded with any other plea, as one would be denying the jurisdiction and the other admitting it. A plea to the jurisdiction may be said to admit the plaintiff's cause of action and the amount; if, therefore, the defendant plead to the jurisdiction, and fail in his plea, the plaintiff will have judgment, unless the court allow an amendment of the plea, in which case in every probability it would be upon payment of costs; it therefore behoves a defendant to be careful, if he have any defence to the action, how he plead to the jurisdiction. If there are two defendants, one may plead to the jurisdiction and the other to the merits.

This plea is very seldom used, as, if the amount claimed be disputed, the Mayor's Court, unless the action is very special, is generally considered unobjectionable as a court for the trial of the issue, and any defendant appearing and pleading to the jurisdiction, even should he succeed, would have to pay his own costs, the court under such circumstances not having power to award him any.

The jurisdiction of the court differs in actions above Fifty pounds, and Fifty pounds and below that amount.

In actions above Fifty pounds, if no part of the cause of action accrued within the city, the defendant may probably safely plead to the jurisdiction of the court (c). The plea must state that "the supposed causes of action and each and every of them accrued to the plaintiff out of the jurisdiction of the court," and must be accompanied by an affidavit of the truth of the plea; this applies to the whole cause of action: if, therefore, there be

(b) See *ante*, p. 5; *Manning v. Farquharson*, 30 Law J. Rep., Q. B. 22.

(c) *Vide* Forms No. X.

a part, however small, even if under Forty shillings, the defendant cannot plead to the jurisdiction, because a defendant cannot pay money into court to one part, and plead to the jurisdiction as to the remainder, as the payment into court admits the jurisdiction (*d*).

If the action is for the sum of Fifty pounds or under, the defendant cannot plead to the jurisdiction; if he or any co-defendant shall dwell or carry on business in the city of London or liberties thereof at the time of bringing the action, or shall have done so within six months next before the time of bringing the action, or if the cause of action, either wholly or in part, arose within the jurisdiction (*e*), the plea must negative the dwelling or carrying on business, &c., and the affidavit must depose to the truth of the plea.

The affidavit in either case may be made by the defendant or by some third person (see Affidavit, Forms No. X.) If it is annexed to the plea it need not be intituled in the cause, if not so annexed it must be intituled. It must not be sworn before the day on which the declaration is delivered. If there is no affidavit with the plea, or if the affidavit is so framed as to make it equivalent to no affidavit, the plaintiff may treat it as a nullity and sign judgment. It must be pleaded within the four days after the delivery of the declaration, irrespective of the demand of plea. The plea must be pleaded in person, and not by attorney.

If the plaintiff be indisposed to take issue on the plea, he may reply by entering a *cassetur billa* (Forms No. X.), and thereupon each party bears his own costs.

CHAPTER VII.

EVIDENCE.

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| <p>1. EXAMINATION BEFORE TRIAL.
 <i>In England and Wales:</i>
 I. Orally, or by Interrogatories.
 II. Interrogatories to parties to suit.
 III. Of Unwilling Witness.
 <i>Out of England and Wales:</i>
 By Commission.</p> | <p>2. NOTICE TO ADMIT, AND ADMISSION OF DOCUMENTS.
 3. NOTICE TO PRODUCE.
 4. PRODUCTION AND INSPECTION OF DOCUMENTS AND PROPERTY.
 5. DISCOVERY OF DOCUMENTS.
 6. SUBPENA.</p> |
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1. EXAMINATION OF PARTIES AND WITNESSES BEFORE TRIAL,

In England and Wales:

I. Orally, or by Interrogatories.

By the custom of London, depositions were taken *in perpetuum rei memoriam*, of persons proceeding abroad or otherwise, and whether there was a suit or not, although there does not appear to have been any method of enforcing it short of that summary process exercised by the mayor in times when the liberty of the subject was deemed of less consequence than in the present day. The Mayor's Court, however, now possesses this authority in suits, first, specially by the Mayor's Court Procedure Act;

(*d*) *Miller v. Williams*, 5 Esp. Rep. 21, 22.

(*e*) Mayor's Court Procedure Act 1667, § 13, Appendix No. 1.

and secondly, by the Common Law Procedure Act 1854, as applied to the Mayor's Court. By the 24th section of the Mayor's Court Procedure Act, the court may in any action, upon the application of any of the parties thereto, order the examination upon oath, upon interrogatories or otherwise, before the Registrar or other person named in such order, of any witness or witnesses in any part of England and Wales, and by the same or any subsequent order or orders may give all such directions touching the time, place, and manner of examination, and all other matters and circumstances connected with such examination, as may appear reasonable and just.

There is no rule as to the time of making the application, as it must depend upon the circumstances of each case. The application must be supported by an affidavit stating the reasons for the application, and the name and residence of the person proposed to be examined.

The examination is generally taken by the Registrar on oath *visâ voce*, but it may be by interrogatories, or both, and before such person as the court may direct. When any order shall have been made, the court may, in and by the first or any subsequent order, command the attendance of any person to be named in such order for the purpose of being examined, or the production of any writing or other document to be mentioned in such order, and may direct the attendance of any such person to be at his own place of abode or elsewhere, if necessary or convenient so to do; and the party at whose instance such order may have been made and issued shall have all the same remedies against such person, in case of non-attendance, as he would have against any person for non-attendance in obedience to any writ of *Spa ad test.* duly served according to the practice of the court, provided that in addition to the service of an order an appointment of the time and place of attendance in obedience thereto, signed by the person or persons appointed to take the examination, or by one or more of such persons, shall be so served together with or after the service of such order: provided also, that every person whose attendance shall be so required shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial: provided also, that no person shall be compelled to produce under any such order, any writing or other document that he would not be compelled to produce at a trial of the cause (a).

Any sheriff, gaoler, or other officer having the custody of any prisoner, may take such prisoner for examination at the place or places named in any such order by virtue of a writ of *Habeas corpus* to be issued for that purpose, which writ shall and may be issued by any judge, under such circumstances and in such manner as such judge may now by law issue the writ commonly called a writ of *Habeas corpus ad test.* (b).

The person or persons authorized to take the examination of witnesses by any such rule, order, writ, or commission as mentioned in the Mayor's Court Procedure Act, shall and may take all such examinations upon the oath of the witnesses to be administered by the person so authorized; and if upon such oath any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall and may be indicted and prosecuted for such offence in the county where such evidence shall be given, or in the county of Middlesex if the evidence be given out of England (c).

(a) Mayor's Court Procedure Act, § 25.
(b) Mayor's Court Procedure Act, § 27.

(c) *Ibid.* §

The Registrar, or other person named in any such rule or order to take any examination in pursuance thereof, is required to make, if need be, a special report to the court touching such examination, and the conduct or absence of any witness or other person thereon or relating thereto; and the court is authorized to institute such proceedings and make such order and orders upon such report as justice may require, and as may be instituted and made in any case of contempt of court (d).

All depositions taken under any rule of court are to be returned and filed in the Registrar's office.

No examination or deposition so to be taken shall be read in evidence without the consent of the party against whom the same may be offered, unless it shall appear to the satisfaction of the court that the examinant or deponent is not in England or Wales, or is dead, or unable from permanent sickness or other permanent infirmity to attend the trial, in all or any of which cases the examinations and depositions certified under the hand of the Commissioner, Registrar, or other person taking the same, shall and may, without proof of the signature to such certificate, be received and read in evidence, saving all just exceptions (e).

The costs of every rule or order to be made for the examination of witnesses by virtue of the Mayor's Court Procedure Act, and of the proceedings thereupon, shall be costs in the cause unless otherwise directed either by the judge of the superior court making such order or by the court (f).

Independently of this authority, by the 46th and 47th sections of the Common Law Procedure Act 1854, applied to the Mayor's Court, the court has power on application, upon such terms as it shall think reasonable, from time to time to order such documents as it shall think fit to be produced, and such witnesses as it may think necessary to appear and be examined *vidâ voce*, either before such court or before the Registrar, and upon hearing such evidence, or reading the report of such Registrar, to make such rule or order as may be just; and the court by such rule or order, or by any subsequent rule or order, may command the attendance of the witnesses named therein for the purpose of being examined, or the production of any writings or other documents to be mentioned in such rule or order; and such rule or order shall be proceeded upon in the same manner, and shall have the same force and effect, as a rule of court under the 1st Wm. IV. c. 22; and the court or Registrar may adjourn the examination from time to time as occasion may require; and the proceedings upon such examination shall be conducted, and the depositions taken down, as nearly as may be in the mode now in use with respect to the *vidâ voce* examination of witnesses under the last-mentioned Act.—And see Interrogatories to opposite party.

II. *Interrogatories to Opposite Party.*

The Common Law Procedure Act 1854, relating to the power to deliver interrogatories to the opposite party, is applied to the Mayor's Court by the Order of the Queen in Council.

The following are the sections:

Section 51.—Power to deliver written interrogatories to opposite party.

Section 52.—Affidavits by party proposing to interrogate, and his attorney.

Section 53.—Oral examination of parties when to be allowed.

(d) Mayor's Court Procedure Act, § 29.

(f) *Ibid.* § 30.

(e) *Ibid* § 31.

Section 54.—Proceedings upon such rule or order.

Section 55.—Depositions upon such examinations to be returned to Master's office.

Section 56.—Examiner may make special report to the court.

Section 57.—Costs of rule and examination to be in the discretion of the court.

All depositions of witnesses under any order or commission must be returned and filed in the Registrar's office.—And see the Mayor's Court Procedure Act, § 24 *et seq.*, and *ante*, pp. 17, 18, 19.

III. Examination of Unwilling Witnesses.

Any party to any civil action or other civil proceeding in the Mayor's Court, requiring the affidavit of a person who refuses to make an affidavit, may apply by summons for an order to such person to appear and be examined upon oath (*g*) before the court or Registrar, to whom it may be most convenient to refer such examination, as to the matters concerning which he has refused to make an affidavit; and the court may, if it think fit, make such order for the attendance of such person before the person therein appointed to take such examination for the purpose of being examined as aforesaid, and for the production of any writings or documents to be mentioned in such order, and may therein impose such terms as to such examination, and the costs of the application and proceedings thereon as shall be thought just (*h*). And see Proceedings thereon, Mayor's Court Procedure Act, § 25, and *ante*, pp. 17, 18.

Out of England and Wales :

By Commission.

By the 26th section of the Mayor's Court Procedure Act, upon the application of any of the parties to any action depending in the court, the court may order a commission to issue for the examination of witnesses upon oath at any place or places beyond the limits of England and Wales, by interrogatories or otherwise, and by the same or any subsequent order or orders may give all such directions touching the time, place, and manner of such examination, and all other matters and circumstances connected with such examination, as may appear reasonable and just.

The application is made in the usual manner: it should in general be supported by an affidavit, showing that issue has been joined in the cause, or that the case is such that a commission should issue before issue joined. The affidavit should in general state the name or names of witnesses proposed to be examined: this however is not absolutely necessary, but unless some reason be given for not stating them, the non-statement might furnish a ground for contending that the application is made for delay or some other improper purpose. In many cases it may be impracticable to state them. The affidavit should also state that the witness is out of England and Wales, and show that he is a material and necessary witness in the cause for the party making the application, and such other facts as will satisfy the court of the necessity for issuing the writ.

The names of the commissioners need not be stated in the affidavit.

The commission is in the Form No. XI: it must be signed and sealed in the Registrar's office. If the examination is not to be *vidé voce*, the interrogatories should be prepared and signed by counsel, and a copy

(*g*) Or affirmation.—See section 30, Common Law Procedure Act 1854.

(*h*) Common Law Procedure Act 1854, §§ 48, 49.

should be served on the opposite party, who may draw up cross interrogatories, which should also be signed by counsel, and the interrogatories and cross interrogatories should be annexed to the commission. The admissibility of the evidence on the trial is subject to the same rule as an examination of witnesses.

2. NOTICE TO ADMIT, AND ADMISSION OF DOCUMENTS.

The practice in this respect in the Mayor's Court does not differ from other courts; therefore where no valid objection exists in putting the adverse party in possession of the nature of the documents proposed to be offered in evidence, it is advisable to require their admission, but it is not compulsory on the party intending to produce documents in evidence to call upon the other side to admit them; but in that event the costs of proving the documents fall on the party producing them, as the 117th section of the Common Law Procedure Act 1852 applies to the Mayor's Court, whereby either party may call on the other party by notice to admit any document, saving all just exceptions; and no costs of proving any document shall be allowed unless such notice shall be given, except in cases where the omission to give the notice is in the opinion of the Registrar a saving of expense. This it seems extends as well to documents in the hands of third parties as to those in the possession of the party requiring their admission, but they must be described accordingly. The notice to admit should be served a reasonable time before the trial, and should be in the Form No. XII., but it may be deviated from as occasion may require. The admission may be made by the attorney, or clerk, having the management of the cause, and when once made it remains good for any subsequent trial of the cause. If an inadvertent admission be made it cannot be withdrawn by mere notice, but application may be made which will be allowed under very special circumstances. When a document has been admitted in the above manner, an affidavit of the attorney in the cause, or his clerk, of the due signature of any admission made in pursuance of such notice, and annexed to the affidavit, is in all cases sufficient evidence of such admission (i).

If after the service of the notice the party on whom it is served refuse or neglect to admit any document mentioned in it, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the judge shall certify that the refusal to admit was reasonable (k). In general it would be considered reasonable to refuse to admit a private instrument to which the party called upon to admit is in no respect privy, and of which he cannot have inspection.

The costs to which the rule applies are the costs of proving the documents, so as to identify them in the cause. The party refusing to admit a document is not liable to the costs of proof if it was not proved at the trial.

In all cases of trials, or inquisitions of any kind, either party may call on the other party, by notice, to admit documents in the manner provided by and subject to the provisions of the Common Law Procedure Act 1852; viz. in case of the refusal or neglect to admit after such notice given, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial or inquisition the judge or presiding officer shall certify

(i) Common Law Procedure Act 1852, § 118.

(k) Section 117, Common Law Procedure Act 1852.

that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except in cases where the omission to give the notice is in the opinion of the Registrar a saving of expense.

3. NOTICE TO PRODUCE.

If the adverse party, or some one on his behalf, is in possession of any written instrument which would be evidence on the trial of a cause, a notice may be served either upon himself or his attorney to produce such instrument upon the trial, and if it be not produced upon proof of the service of the notice, secondary evidence of such instrument may be given.

The notice should be in writing intituled in the court and cause, though it would appear a verbal notice is sufficient; but this cannot be considered a safe course. The notice may be served upon the opposite party himself, or his attorney, and should be served a reasonable time before the trial, which must depend upon the nature of the document and other circumstances.

It is for the judge at the trial to determine whether such notice has been served in sufficient time. The notice will apply not only to the first, but to the subsequent and all other trials, if more than one, of the cause.

By the Common Law Procedure Act 1852, § 119, an affidavit of the attorney in the cause, or his clerk, of the service of any notice to produce, in respect of which notice to admit shall have been given, and of the time when it was served, with a copy of such notice to produce annexed to such affidavit, shall be sufficient evidence of the service of the original of such notice, and of the time when it was served (l).

4. PRODUCTION AND INSPECTION OF DOCUMENTS AND PROPERTY.

In any action or other legal proceeding in the Mayor's Court (m), the court may, on application made for such purpose by either party, compel the opposite party to allow the party making the application to inspect all documents in the custody or power or under the control of such opposite party, relating to such action or other legal proceeding, and, if necessary, to take examined copies of the same, or to procure the same to be duly stamped, in all cases in which, previous to the passing of the Act, a discovery might have been obtained by filing a bill, or by any other proceeding in a court of Equity, at the instance of the party so making application as aforesaid to the court.—And see *Discovery of Documents*; *Examination of Unwilling Witness*.

And the court may (n) in any action, upon the application of any of the parties thereto, order the examination on oath, upon interrogatories or otherwise, before the Registrar or other person or persons to be named in such order, of any witness or witnesses in any part of England and Wales; and by the same or any subsequent order or orders, may give all such directions touching the time, place, and manner of examination, and all other matters and circumstances connected with such examination, as may appear reasonable and just. And when the court has made an order for the examination of witnesses, under the 24th section of the Mayor's Court Procedure Act, it may (o), in and by the first or any subsequent order, command the attendance of any person to be named in such order, for the purpose of being examined or the production of any writing or

(l) And see § 25 Mayor's Court Procedure Act, as to Production of Documents, &c.; and also Common Law Procedure Act 1854, § 46.

(m) Mayor's Court Procedure Act, § 21.

(n) *Ibid.* § 24.

(o) *Ibid.* § 26.

other document to be mentioned in such order, and may direct the attendance of any such person to be at his own place of abode or elsewhere, if necessary or convenient so to do; and the party at whose instance such order may have been made and issued, shall have all the same remedies against such person in case of non-attendance, as he would have against any person for non-attendance in obedience to any writ of *Spa ad test.* duly served according to the practice of the court. Provided that, in addition to the service of the order, an appointment of the time and place of attendance in obedience thereto, signed by the person or persons appointed to take the examination, or by one or more of such persons, shall be so served, together with or after the service of such order; provided also, that every person whose attendance shall be so required, shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial; provided also, that no person shall be compelled to produce, under any such order, any writing or other document that he would not be compellable to produce at a trial of the cause.

The court has power also, under the Common Law Procedure Act 1854, applied to the Mayor's Court, to direct the oral examination of witnesses and the production of documents. Under the 46th section, upon the hearing of any motion or summons, the court may at its discretion, and upon such terms as it shall think reasonable, from time to time to order such documents as it shall think fit to be produced; and such witnesses as it may think necessary to appear and be examined *visd voce*, either before the court, or before the Registrar; and upon hearing such evidence, or reading the report of such Registrar, to make such rule or order as may be just.

Section 47.—Proceedings before and upon such examination.

Inspection of Property.

Either party shall be at liberty to apply to the court (*p*) for a rule or order for the inspection by the jury, or by himself, or by his witnesses, of any real or personal property, the inspection of which may be material to the proper determination of the question in dispute; and the court may, if it think fit, make such rule or order upon such terms as to costs and otherwise as the court may direct; provided always, that nothing herein contained shall affect the provisions of the Common Law Procedure Act 1852, or any previous Act, as to obtaining a view by a jury; provided also, that all rules and regulations now in force and applicable to the proceedings by view, under the said last-mentioned Act, shall be held to apply to proceedings for inspection by a jury under the provisions of the Common Law Procedure Act 1854, or as near thereto as may be.

And the court (*q*) may make all such rules or orders upon the serjeant-at-mace or other person as may be necessary to procure the attendance of a special or common jury, for the trial of any cause or matter depending in the court, at such time and place and in such manner as it may think fit.

5. DISCOVERY OF DOCUMENTS.

Upon the application of either party to any cause or other civil proceeding in the Mayor's Court, upon an affidavit by such party (*r*) of his belief that any document to the production of which he is entitled, for

(*p*) Common Law Procedure Act, 1854, § 58, applied to the Mayor's Court. (*q*) *Ibid.* § 59.
 (*r*) An affidavit by the attorney of a party abroad has been held not to satisfy this requirement. *Herschfield v. Clark*, 11 Exch. 713; but see *Burnett v. Hooper*, 1 F. and F. 412, 467 (*Williams and Wiles, JJ.*)

the purpose of discovery or otherwise, is in the possession or power of the opposite party, it shall be lawful for the court to order that the party against whom such application is made, or, if such party is a body corporate, that some officer to be named of such body corporate, shall answer on affidavit stating what documents he or they has or have in his or their possession or power relating to the matters in dispute, or what he knows as to the custody they or any of them are in, and whether he or they objects or object (and if so on what grounds) to the production of such as are in his or their possession or power, and upon such affidavit being made the court may make such further order thereon as shall be just (*s*).—And see examination of unwilling Witness.

6. SUBPŒNA.

Subpœnas are issued by the respective attorneys, and must be sealed at the office of the court, and may be issued immediately after the cause is at issue; or under special circumstances, upon application, the court will allow them to be issued even before that time.

The writ is a Queen's writ, and in cases where the witnesses reside in England or Wales the ordinary form is used, but where any witness is resident in either Scotland or Ireland, the application must be made to the court, showing that such witness is material, and that it is proper to compel his personal attendance; in which case the court may, in its discretion, order the writ to issue either *ad testificandum* or *duces tecum*, and the service of such writ, in any part of the United Kingdom, will be valid (*t*), a special form, however, is requisite in such case (*u*) (see Form No. XIII). The practice relating to the service and duties of the party served may be said to be identical with that of the courts at Westminster, and it is therefore unnecessary further to allude to them. No subpœna for the production of an original record can be issued, unless a rule of court shall be produced to the officer issuing the same and filed with him, and unless the writ shall be made conformable to the description of the document mentioned in such rule or order. Any witness not attending according to the tenor of his subpœna, is liable for such neglect, and see 5 Eliz. c. 9, § 12.

CHAPTER VIII.

THE RECORD, ENTRY FOR TRIAL, AND TRIAL.

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| 1. OF THE RECORD, AND ENTERING
FOR TRIAL. | II. <i>Special Case</i> . |
| 2. OF THE TRIAL GENERALLY. | III. <i>By Consent without Pleadings</i> . |
| I. <i>Issues of Fact without a Jury</i> . | 3. NEW TRIAL. |

1. OF THE RECORD, AND ENTERING FOR TRIAL.

EACH party having a copy of all the proceedings, no formal issue is made up for delivery, but the plaintiff engrosses the pleadings upon parchment, and at the end of defendant's plea, or the last pleading, adds the *Similiter*: "And the plaintiff doth the like," "Therefore," &c. Or, where the plaintiff takes issue upon the defendant's pleading, he may enter the *Similiter* for the defendant. Every declaration and other

(*s*) Common Law Procedure Act 1854, § 50, applied to Mayor's Court.

(*t*) Mayor's Court Procedure Act 1857, § 50.

(*u*) *Ibid*.

pleading, including the issue, must be entered on the record made up for trial under the date of the day of the month and year when the same respectively took place, and without reference to any other time or date unless otherwise specially ordered. No entry or continuance by way of imparlance, *curia advisari vult*, or otherwise, are to be made upon any record or roll whatever, or in the pleadings.

The court may order separate records to be made, and separate trials to be had, where different causes of action are joined (a).

After the cause is once at issue, no period of time renders the proceedings void, but either party may set the cause down for trial according to the rules of the court.

After the cause is at issue the plaintiff may enter it for trial for any day appointed for the trial of causes, and must thereupon give notice of trial to the defendant's attorney. Notice of trial cannot be given before issue is joined; but where the plaintiff's pleading is in denial of the pleading of the defendant the plaintiff may join issue by adding the *Similiter*, and enter his cause, giving notice thereof and of trial at the same time, or the notice of trial alone is equivalent to a notice of having joined issue. The cause must be entered in the Registrar's office for trial (see Form No. XIV.), and notice thereof must be given to the defendant's attorney not more than twelve or less than eight days before the day of trial; that is, the defendant must not have less than eight or more than twelve days' notice, exclusive of the day of trial. If the last day for giving the eight days' notice falls on a Sunday, the notice must be given on the Saturday. Where the defendant is under terms to take short notice of trial, four days' notice, exclusive of the day of trial, is sufficient. Where defendant is under terms to take whatever notice plaintiff can give him, and notice of trial is served, a countermand of such notice may be given on the morning of the day appointed for the trial without incurring costs of the day. It should be particularly understood that a cause intended to be tried should always be entered in the office at least eight days before the day of trial, even if the cause is not at issue, that is, where the defendant is under terms to take short notice of trial; and if it is not so entered the court will not permit it subsequently to be entered, except under special circumstances, and even then at an increased fee.

There is no particular form of notice of trial, but it must be such as cannot mislead a defendant (see Form No. XV). The place of trial need not be mentioned; the notice may be amended upon such terms, if any, as the court may think fit. If there are several defendants, a notice must be given to each if they appear in person, or, if they appear separately, by different attorneys.

After a cause has been at issue ten days, or after a court has elapsed for which the plaintiff might have entered it for trial, and has not done so, although the day for setting it down was within ten days after issue, or if he have set it down and countermanded it, the defendant may set it down for trial at the following court *per proviso* and give notice thereof in the same manner as in the case of a plaintiff. If both plaintiff and defendant set down the cause for trial at the same court day, or where the defendant only has set down the cause for trial *per proviso*, the defendant's attorney must give four days' notice to the plaintiff's attorney to bring in the record to the Registrar's office. This must be brought in within two days before the trial, exclusive of the day of trial; and if the plaintiff's attorney do not do so, the defendant's attorney may make up and lodge a

(a) Common Law Procedure Act 1852, § 41.

record, and will be entitled to the costs thereof. If the defendant lodge a record without giving such notice, no costs will be allowed for making up such record. This record will be precisely the same as the plaintiff's record, and can be made up by the defendant's attorney from his pleadings.

Certain days are fixed as sittings for the trial of causes, and a list of all the causes entered for trial at the sittings may be inspected by either party; but although any particular cause may not appear in the list, it must not be taken for granted that it will not be tried, if notice of trial is regularly served, as the court may at any time, after the list is made up, allow it to be entered (see *ante*, p. 25). A cause list containing the names of the causes to be tried on each day of the sittings is posted in the office of the court on the previous day. No fresh notice of trial is necessary where the cause has been made a *Remenet*, or where the cause has been put off by order of the court, but each party must be prepared to try on the appointed day, and the plaintiff will be liable for costs of the day if the cause be struck out by reason of his not appearing, or the cause may be taken as undefended if the defendant do not appear.

Either the plaintiff or defendant is entitled to countermand his notice of trial, any time not within three days of the day of trial, exclusive of that day; or if short notice of trial be given, then countermand of such notice may be given not less than the second day before the day of trial, exclusive of that day, and the costs of the day will be costs in the cause. This also applies to a trial by the court without a jury. If the day of giving notice of countermand falls on a Sunday, then it must be given on the Saturday.

If the defendant has set down the cause, *per proviso*, for the same court as the plaintiff, the defendant is entitled to try it under his entry, and the countermand by the plaintiff in such case will be of no avail. If the plaintiff do not countermand his notice, but withdraws his record after the time allowed for countermanding the trial has expired, then he will have to pay costs of the day. This will also be the same with the defendant if he enter it by *proviso*, and do not countermand but withdraws his record in the same way. When it is intended to try a cause, the record must be lodged in the Registrar's office the second day before the day for which notice is given, Sunday not counting as one; with the record there must be a copy of the particulars of the plaintiff's demand in the action and of the defendant's set-off; this will apply to either the plaintiff or defendant entering his cause; if the record is not so lodged, the cause will not be entered in the cause list of the day.

The same practice with respect to the entering for trial and lodging the record, &c., is adopted with all issues of law as well as causes. If, therefore, a demurrer or special verdict, &c., is to be argued, the plaintiff or defendant may set it down for argument, as in the case of an ordinary issue, specifying what it is, whether an argument or demurrer, or special verdict, &c., and leaving a copy of the proceedings, or demurrer, or special verdict, with the record, with the points intended to be insisted on, and in default thereof it will not be entered in the list of the day. Where there is a demurrer to part only of the declaration or other pleading, those parts only to which the demurrer relates must be copied into the demurrer books.

Points in demurrer must be delivered to the opposite party four days before the day of argument. Where there are cross demurrers the party demurring first is entitled to begin the argument.

2. OF THE TRIAL GENERALLY.

At the sitting of the court for the trial of causes the list for the day is called over; if the defendant's attorney does not answer, the cause may be taken as undefended; and if the plaintiff's attorney does not answer, the cause is struck out of the list, the effect of which is equivalent to the withdrawal of the record, and the plaintiff will have to pay the costs of the day; it is therefore very material that at the immediate sitting of the court in all cases both plaintiff and defendant should be represented. If any cause has been struck out, or taken as undefended by error of any of the parties, the court at times will restore it upon terms. Where the cause has been entered by the defendant, *per proviso*, he has the same power to withdraw his record as the plaintiff has, and is also liable to costs of the day upon such withdrawal. If, however, the record is not withdrawn by the defendant, and he is not present, the plaintiff may proceed upon the defendant's entry of the cause, although it is entered *per proviso*. The order for costs of the day for not proceeding to trial may be obtained by application to the court, by notice as in ordinary applications.

If either party set down a cause a second time for trial, not having paid to the opposite party, if so ordered by the court, the costs of the day occasioned by setting it down the first time without proceeding to trial, the court will on the application of such opposite party, except under special circumstances, direct the cause to be struck out, unless such costs are paid within a time specified by the court.

The proceedings at the trial may be said to be identical with those of the superior courts, as to power to adjourn (*c*); Speeches of counsel (*d*); Power to refer (*e*); Stamping documents (*f*); Evidence, witnesses (*g*); Amendment (*h*); Bill of exceptions, nonsuits, verdict, &c.

As to verdicts not exceeding Five pounds in actions of debt, and Forty shillings in actions of tort, and also certificate of judge to deprive plaintiff of costs in action for injury where verdict less than Five pounds, see Judgment and Execution.

If a special verdict is returned by the jury on the trial, the verdict is drawn by the plaintiff's attorney and agreed with the defendant's attorney, or by the judge who tried the cause, in case of dispute. When settled, it may be set down for argument as an ordinary issue.

I. *Issues of Fact without a Jury.*

The parties in any cause may, by consent in writing, signed by them or their respective attorneys, leave the decision of any issue of fact to the court, provided that the court shall in their or his discretion think fit to allow such trial, and such issue of fact may thereupon be tried and

- (c) Common Law Procedure Act 1854, §§ 19, 103.
 (d) Common Law Procedure Act 1854, § 18.
 (e) See Compulsory reference, Arbitration.
 (f) Common Law Procedure Act, 1854, §§ 28, 29, 30, 31, 103.
 (g) The following sections of the Common Law Procedure Act 1854, apply to the Mayor's Court.—See *ante*, Evidence.
 20. Affirmation instead of oath in certain cases.
 21. Persons making a false affirmation subject to the same punishment as for perjury.
 22. How far a party may discredit his own witness.
 23. Proof of contradictory statements of adverse witness.
 24. Cross examination as to previous statements in writing.
 25. Proof of previous conviction of a witness may be given.
 26. Attesting witness need not be called except in certain cases.
 27. Comparison of disputed writing.
 89. False evidence.
 (h) See Amendment.

determined, and damages awarded where necessary, in open court, by the judge who might otherwise have presided at the trial thereof by jury, and the verdict of such judge shall be of the same effect as the verdict of a jury, save that it shall not be questioned upon the ground of being against the weight of evidence; and the proceedings upon and after such trial, as to the power of the court or judge, the evidence and otherwise, shall be the same as in the case of trial by jury (i).

The court has, however, power to make a general rule or order dispensing with the allowance, either in all cases or in any particular class or classes of cases to be defined by such rule or order (k). At present the application must be made to the court in the usual manner for an order to try without the intervention of a jury.

Section 1 of the Common Law Procedure Act 1854, applies to the Mayor's Court.

1. Judge may by consent try questions of fact.—And see sections 80, 81 Common Law Procedure Act 1852.—And see Arbitration.

II. *Special Case.*

The parties in any action may after issue joined by consent, and by the order of the court, state the facts of the case in the form of a special case for the opinion of the Mayor's Court or of any one of the superior courts, and may agree that judgment shall be entered thereon for the plaintiff or defendant as the court or such superior court may think fit (l).

When the opinion of such superior court shall be required, the Registrar of the Mayor's court shall transmit such special case under the seal of the court to the rule department of the Master's office of the superior court in which the case is to be argued; and thereupon all such proceedings shall be taken and rules and regulations observed, in the said superior court, as are usual with reference to cases stated for the opinion of such superior court in actions therein pending (m).

The Registrar of the court, upon the production of an office copy of the rule of the superior court, made upon hearing the said special case, shall enter judgment in the court in conformity with the decision of the superior court (n).

The following sections of the Common Law Procedure Act 1852, are applied to the Mayor's Court.

Section 46.—Questions of law may be raised after writ issued by consent, &c., and without pleading.

Section 47.—Agreement as to payment of money and costs according to judgment upon special case.

Section 48.—Costs to follow the event, unless otherwise agreed,—And see Arbitration.

III. *By Consent without Pleadings.*

Questions of fact may be raised for a jury without pleadings.

The following sections of the Common Law Procedure Act, 1852, are applied to the Mayor's Court.

Section 42.—Question of fact may, after writ issued by consent and leave of a judge, be raised without pleadings.

Section 43.—Agreement may be entered into for the payment of money and costs according to the result of the issue.

(i) Mayor's Court Procedure Act 1857, § 51.

(k) Common Law Procedure Act 1854, § 1.

(l) Mayor's Court Procedure Act 1857, § 5.

(m) *Ibid.* § 6.

(n) *Ibid.* § 7.

Section 44.—Judgment to be entered according to the agreement, and execution issued forthwith unless stayed.

Section 45.—Proceedings on issue may be recorded.—And see Arbitration.

3. NEW TRIAL.

The Mayor's Court, although an inferior court in a generic sense, has, as far as the records referring to such matters can be traced, ever been in the habit, with a short hiatus, of granting new trials upon the merits, when necessary, as well as upon the grounds of fraud and surprise.

A motion for a new trial may be made at once to the judge if sitting, either as a rule to show cause, or, by giving notice to the other side, the party moving may apply for a rule absolute in the first instance; but in such case the notice must state the ground of application, and that it is the intention of the party applying to move for a rule absolute. If the judge is not sitting, then application should be made to the Registrar upon affidavit to stay execution, to enable the party to make application at the next sitting of the court, or a special day to be named for that purpose; this the Registrar will do if there be any grounds for such application upon terms.—And see *post*, Appeal.

No new trial can be had as to the ruling of a judge as to stamp. Common Law Procedure Act 1854, § 31.

In every rule *Nisi* for a new trial, the grounds upon which it is granted must be stated.—Common Law Procedure Act 1854, § 33.

If rule refused, party may appeal.—Common Law Procedure Act 1854, §§ 34 and 35.

If a new trial be granted without any mention of costs in the rule, the costs of the first trial are not allowed to the successful party, although he succeed in the second.

CHAPTER IX.

OF THE POSTEA JUDGMENT AND EXECUTION.

THE party who substantially succeeds at the trial is entitled to have the record, and enter the *Postea*; and in general in all matters relating to the *Postea*, the practice of the Mayor's Court corresponds with that of the superior courts. After the record has been obtained from the Registrar, the judgment is entered up according to the circumstances of the case.—See Forms *Postea* and Judgment No. XVI.

The record need not be fully entered up before judgment is signed. Judgment is signed by filing in the office of the court a *docquet*, in Form No. XVII., and it is then marked upon the record.

If the plaintiff obtain a verdict in an action of covenant, debt, detinue, or *assumpsit*, not being an action for breach of promise of marriage, for a sum not exceeding Five pounds; or if in an action of trespass, trover, or case, not being an action for malicious prosecution, or for libel or slander, or for criminal conversation, or for seduction, the plaintiff obtain a verdict for a sum not exceeding Forty shillings, he cannot recover his costs unless the judge before whom such verdict shall be obtained shall certify on the back of the record that there appeared to him a sufficient reason for bringing the action in the Mayor's Court (a). Neither can a plaintiff

(a) Mayor's Court Procedure Act, § 11.

recover his costs in an action for injury where the verdict is for a Sum less than Five pounds, if the judge certifies to deprive him of costs (b).

By the County Court Amendment Act 1867, if a plaintiff recovers a verdict for less than Ten pounds, he can only recover County Court costs, unless the Judge shall certify that it was a fit action to be brought in the Mayor's Court. See *ante*, pp. 3, 4.

No person is entitled to issue execution, even if judgment be signed, or the costs taxed, until the time for appeal has expired.

If the leave of the court has not been obtained by either party, in actions for Twenty pounds and under, to move under the 10th section of the Mayor's Court Procedure Act, the party obtaining the verdict may on the same day as the verdict give notice of taxation of costs for the following day, and on that day tax his costs and sign judgment, but he cannot issue execution until the day following the day on which he taxes his costs unless by permission of the court, which may be obtained at the time of the taxation.

If the action be for a sum exceeding Twenty pounds, then the party obtaining the verdict or non-suit cannot obtain execution until the third day after such verdict or non-suit, as the opposite party has two days time within which he may give notice of appeal (c); but the party entitled to the record may notwithstanding give notice of taxing costs as before, and proceed to judgment: and, if he have taxed his costs on the second day, he may issue his execution on the third day if no notice of appeal has been given, but he cannot have execution until the day after the day of taxation of costs, unless by permission of the court.

If any reason exists for stay of execution, application should be made to the court after the verdict or non-suit, or application may be made to the Registrar, who will, if any reason exists, stay execution upon terms to enable the parties to apply to the court for a new trial or otherwise.

The writ of execution is in the Form No. XVIII.

It may be amended.

It must be endorsed by the attorney issuing it, or by the plaintiff or defendant in person, with the full address.

It may be sued out by a different attorney than employed in the cause without any order to change attorneys.

If interest is required, there must be an endorsement stating the date from which it is required, at four *per cent.*, unless the parties have entered into an agreement that larger interest should be secured by the judgment.

In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of the execution above the sum recovered.

In the Mayor's Court it was not necessary formerly to issue any writ of *Scire facias* to revive any judgment, but now that the sections of the Common Law Procedure Act relative to proceedings to revive are applied to the Mayor's Court, probably it will be considered necessary in all cases to revive judgments in the manner pointed out by that Act.

The following sections on the subject apply to the Mayor's Court.

Section 128.—Execution in six years without revival.

Section 129.—Judgment to be revived by writ, or with leave of court by suggestion.

(b) Common Law Procedure Act 1860, § 24.

(c) See Appeal, and Mayor's Court Procedure Act, § 8.

Section 130.—Proceedings upon application for suggestion to revive judgment.

Section 131.—Writ of revivor, and proceedings thereon.

Section 132.—Writ of *Scire facias* in other cases, to be tested, directed, and proceeded upon in like manner.

Section 133.—Appearance to writ of revivor.

Section 134.—As to issue of writ of revivor upon judgment more than ten years old.

Judgment and execution where parties have agreed to issue, &c., without pleadings.—See special case, and Trial by consent without pleadings, *ante*, pp. 27, 28. See Common Law Procedure Act 1852, §§ 42, 43, 44, 45, 47, and 48, applied to the Mayor's Court.

The Debtors' Prison for the City of London is the prison wherein all persons committed into custody under any process or proceeding of the Mayor's Court are confined; and the keeper for the time being of the prison is required to receive and take into his custody every person committed or ordered to stand committed by the court; and in case the keeper of the prison neglects or refuses to receive or take into his custody any person committed by the court, or before the expiration of the time for which any person is committed to his custody discharges such person out of his custody and wilfully suffers such person to go at large, without a warrant or order for that purpose in writing signed by the plaintiff or by the court, or by some other court of competent authority, the keeper so offending in either of those cases is liable to pay to the plaintiff, at whose suit the person was in custody, the debt, or debt and costs for which such person shall have been committed to the custody of such keeper, and also any sum not exceeding Twenty pounds, at the discretion of the court.—Mayor's Court Procedure Act, § 42.

The serjeant-at-mace is in the same position as the sheriff relative to all writs of execution, and rules to return writs may be obtained; but unless a formal return is required, the method usually adopted when any question arises relative to the serjeant's proceedings, is to give notice to the serjeant of an application to the court as in other cases.—And see *ante*, p. 2.

CHAPTER X.

OF REVIEWING THE JUDGMENTS OF THE MAYOR'S COURT.

1. APPEAL.

2. ERROR.

And see New Trial.

1. APPEAL.

BEFORE the passing of the Mayor's Court Procedure Act, there was no appeal from the judgments in the Mayor's Court. Error alone existed either by writ of error, as error upon the record, or bill of exceptions and writ of error.

By the 8th, 9th, and 10th sections of this Act an appeal is given, but it differs according to the amount sought to be recovered in the suit, that is, whether such sum be above Twenty pounds, or Twenty pound and below, or whether the judge trying the cause has given leave to move.

In cases above Twenty pounds, if either party is dissatisfied with the determination or direction of the court in point of law, or upon the admission or rejection of any evidence, such party may appeal to any one of

the superior courts provided he shall, within two days after such determination or direction give notice of appeal to the other party or his attorney, and shall also give security within such time or times as the court shall direct, to be approved of by the Registrar of the Court (if the judge shall so direct) for the costs of the appeal, whatever be the event of the appeal, and for the amount of the judgment if he be the defendant, and the appeal be dismissed. Provided nevertheless that such security, so far as regards the amount of the judgment, shall not be required in any case where the judge of the court shall have ordered the party appealing to pay the amount of such judgment into the hands of the Registrar, and the same shall have been paid accordingly; and the said Court of Appeal may either order a new trial on such terms as it shall think fit, or may order judgment to be entered for either party as the case may be, and may make such order with respect to the costs of the said appeal as such court may think proper; and such orders shall be final.

The party dissatisfied with the determination if he intend to appeal after giving notice, as stated in the section, may, or the opposite party may, make application to the judge if sitting, or if not then to the Registrar, to order a time within which such security should be given. If he be plaintiff, then the security will be for the costs of the appeal only. If he be defendant, then for the costs of the appeal and the amount of the judgment; but if he be ordered to pay into court the amount of the judgment, then the security will be for the costs of the appeal only.

If the party dissatisfied with the determination give the notice of appeal, but do not obtain the order relative to the security, then the opposite party should give notice of application, and apply for an order that security be given.

The court has in ordinary cases ordered security for the appeal in Fifty pounds. This may be either by bond or payment of money into court, but is irrespective of the amount of the judgment if the verdict is for the plaintiff, which judgment would include the costs of the trial, but the plaintiff appears to be bound to give security for the costs of the appeal only. The security is such as the Registrar may be satisfied with, similar to that given in ordinary cases under orders for security for costs. If the security is not given within the time or times directed by the court, the opposite party may proceed to execution.

The appeal is directed by section 9 to be in the form of a case agreed on by both parties or the attorneys, and in case of disagreement it is advisable to attend before the Registrar to endeavour to settle it. If this cannot be effected, then a copy of the case, as proposed by each party, is left for the judge to settle; this is signed by the judge, and transmitted by the Registrar to the rule department of the Master's office of the court in which the appeal is to be brought. The Court of Appeal is formed of two or more puisne judges or barons of the superior courts, who are to sit for that purpose out of term.

In actions for the recovery of Twenty pounds and under, no appeal can be had without the leave of the judge under section 10 of the Mayor's Court Procedure Act; but it will be observed that under this section there is no restriction as to the amount for which the action is brought; it contains a general power to grant leave in all cases; therefore if any point arises upon the trial even in cases over Twenty pounds, and there is no fear on account of the costs of the judgment or appeal, it is preferable to obtain leave of the judge to move under section 10, to save the trouble and expense of obtaining the security and the preparation of the special case under the 8th and 9th sections, the proceedings under the 10th

section being by motion, independently of which the Court of Appeal mentioned in the 8th section is difficult of formation, and may not be so satisfactory a tribunal as the full court under section 10, or the judge might grant leave to move upon terms as to security, &c.

By the 10th section, if upon the trial of any issue the judge shall grant leave to the plaintiff or defendant to move in any of the superior courts to set aside a verdict or a nonsuit, and to enter a verdict for the plaintiff or defendant, or to enter a nonsuit, as the case may be, or for a new trial, the party to whom such leave may have been given may apply by motion to such superior court, within such period of time after the trial as motions of the like kind shall from time to time be permitted to be made in such superior court, for a rule to show cause why such verdict or nonsuit should not be set aside and a verdict entered for the plaintiff or defendant, or a nonsuit entered, or why a new trial should not be had, as the case may be, in such action, which court, is hereby authorized and empowered to grant or refuse such rule (which rule, when granted, shall operate as a stay of proceedings until the determination thereof), and afterwards to proceed to hear and determine the merits thereof, and to make such orders thereupon and as to the costs as the same court shall think proper; and in case such court shall order a new trial to be had in any such action, the party obtaining such order shall deliver the same or any office copy thereof to the Registrar of the said court, and thereupon all the proceedings in the former verdict or nonsuit shall cease, and the action shall proceed to trial according to the practice of the court in like manner as if no trial had been had therein; or in case the court before whom such rule shall be heard shall order the same to be discharged, the party obtaining any such order may, upon delivering the same or an office copy thereof to the Registrar, be at liberty to proceed in any such action as if no such rule *Nisi* had been obtained; and if the verdict be ordered to be entered for the plaintiff or defendant, or a nonsuit be ordered to be entered, as the case may be, judgment shall be entered accordingly.

The Court of Appeal shall give such judgment as ought to have been given in the court below, and all such further proceedings may be taken thereupon as if the judgment had been given by the court in which the record originated.—Common Law Procedure Act 1854, § 41. And see Error, and the sections of the Common Law Procedure Acts applied to the Mayor's Court in Error and Appeal.

2. ERROR.

Before the passing of the Mayor's Court Procedure Act 1857, the Court of St. Martin's-le-Grand was the Court of Error from the Mayor's Court. The court was a court of delegates, and called into existence upon the petition of a suitor to the Lord Chancellor, who thereupon issued a writ of error upon which the proceedings in error were grounded. By the Mayor's Court Procedure Act 1857, § 4, this method is abolished, and in all cases of error arising on proceedings in the Mayor's Court, the Exchequer Chamber is substituted as the Court of Error (a).

By the Order of the Queen in Council all the sections in the Common Law Procedure Acts 1852, 1854, and 1860, relative to error in proceedings, have been applied to the Mayor's Court.

(a) The Act provides that all matters in error shall be proceeded with according to the rules to be framed for that purpose. (See sections 4, 45, of Mayor's Court Procedure Act.) These rules, however, have never been framed, probably on account of the proceedings in error under the Common Law Procedure Acts having been applied to the Mayor's Court.

The following are the sections so applied.

Common Law Procedure Act 1852.

- Section 146.—Error to be brought within six years.
 Section 147.—Proviso for disabilities.
 Section 148.—Writ of error abolished.
 Section 149.—Error in law, how brought.
 Section 150.—Error not *Supersedeas* till service of the copy of the note and grounds of error.
 Section 151.—Bail in error.
 Section 152.—Suggestion instead of assignment of, and joinder in error.
 Section 153.—Roll to be made up and suggestion entered by plaintiff in error.
 Section 154.—Error brought by one of several persons against whom judgment has been given.
 Section 155.—Judgment roll to be brought into court instead of transcript.
 Section 156.—Jurisdiction of courts of error over the proceedings.
 Section 157.—Court of Error to have like powers with court below.
 Section 158.—Proceedings in error in fact.
 Section 159.—Plaintiff may discontinue proceedings in error.
 Section 160.—Defendant may confess error, and consent to reversal of judgment.
 Section 161.—Death of plaintiff in error no abatement.
 Section 162.—Providing for death of one of several plaintiffs in error.
 Section 163.—Proceedings upon death of sole plaintiff, or of all the plaintiffs in error.
 Section 164.—Death of defendant in error no abatement.
 Section 165.—Proceedings upon death of one of several defendants in error.
 Section 166.—Proceedings upon death of sole defendant, or of all the defendants in error.
 Section 167.—Marriage not to abate proceedings in error.

Common Law Procedure Act 1854.

- Section 32.—Error may be brought on a special case.
 Section 41.—Judgment of Court of Appeal.

Common Law Procedure Act 1860.

- Section 4.—Appeal to the court from order of judge.
 Section 5.—Power to appeal from order of court.
 Section 6.—Court of Error to be court of appeal.
 Section 7.—Notice of appeal.
 Section 8.—Bail.
 Section 9.—Form of appeal.
 Section 10.—Judgment of Court of Appeal, and power to remit proceedings.
 Section 11.—Power of court of appeal as to costs, &c.—And see Ejectment,—Stamp.

Bill of Exceptions.

The power of tendering a bill of exceptions, and the rules respecting it, do not differ from those in the superior court.

CHAPTER XI.

JUDGMENT BY DEFAULT.

1. FOR WANT OF APPEARANCE. 3. FOR WANT OF PROSECUTION.
2. FOR WANT OF PLEA.

1. FOR WANT OF APPEARANCE.

If the defendant has not appeared and given the sealed notice thereof to the plaintiff's attorney at the expiration of the eighth day after the day of service of the plaint, the plaintiff is entitled to judgment the morning of the ninth day, even if the eighth day be a Sunday, Christmas day, or Good Friday, or other holiday; the defendant, however, has the right to appear at any time after the expiration of the eighth day, and give the notice, if in sufficient time to prevent the plaintiff signing judgment, and service of the notice upon the clerk or other person about to sign judgment is sufficient.—See as to time to appear in actions under the Bills of Exchange Act, and in Ejectment, Chapters XVII. and XVIII.—And see Common Law Procedure Act 1852, § 32.

For the purpose of signing judgment the record must be entered up (Form No. XIX.), and an affidavit of the service of the plaint made (Form No. XX.); this must be filed with a *docquet* of the judgment (Form No. XVII.). The record will thereupon be marked with the judgment and the amount of costs (*a*), and the plaintiff will be entitled immediately thereupon to issue execution. Common bail, *sec. stat.*, is now abolished.

Where the debt does not exceed 20*l.* the plaintiff may on signing judgment obtain an order for payment, as upon a judgment summons (*b*), but this can only now apply when judgment is signed in open Court.—See p. 36 as to Interlocutory Judgment.

2. FOR WANT OF PLEA.

If the defendant has appeared and not pleaded within due time (see Chap. VI.), the plaintiff is entitled to sign judgment. The record is continued (Form No. XXI.), and the *docquet* varied by inserting "judgment for want of plea," instead of "default of appearance," and the amount of costs is left in blank. Upon signing judgment for want of plea, notice of taxing is given one day for the next; the costs may at the appointed time be taxed (*a*), and the plaintiff is at liberty immediately to issue his execution unless stayed by the court.

The same form will apply, *mutatis mutandis*, to any other pleading.—See p. 13, Judgment for Defective Plea.

All proceedings in the Mayor's Court are specially indorsed, and therefore where some of the defendants only appear, proceedings may be taken under the 33d section of the Common Law Procedure Act 1852.

If a defendant withdraw his plea, then judgment is signed in the same way, except the words "on withdrawal of plea" must be used instead of the words "for want of plea." As to when a plea is a nullity or irregular, see Mayor's Court Procedure Act and Chitty's Archb. 11th edition, 288 *et seq.*

(a) See *post*, Costs, where sum recovered does not exceed Five pounds in debt, &c., or Two pounds in tort, and see *ante* p.p. 3-4.

(b) Mayor's Court Procedure Act, § 37.

Interlocutory Judgment is signed in the same manner as final judgment (See Form No. XIX.)—The cause may then be entered for inquiry of damages in the same manner as causes are entered for trial, unless an order is obtained for the damages to be assessed before the Registrar.—See Chap. XV.

3. WANT OF PROSECUTION.

If the defendant has appeared and the plaintiff's attorney does not, on the day after the notice of appearance shall have been given, deliver a declaration, or not reply to the plea of the defendant, or not give notice of joining issue, the defendant's attorney may immediately demand of the plaintiff's attorney either the declaration or other pleading; and if the plaintiff's attorney do not within four days, exclusive of the day of such demand, deliver his declaration or replication or other pleading, or give notice of having joined issue, the defendant's attorney may sign judgment for want of prosecution. For this purpose a record must be made up, setting out the default (Form No. XXII.), and a *docquet* will be necessary on signing judgment, as in other cases, stating the judgment to be signed "for want of prosecution," stating the default. Notice of taxing the costs as in ordinary cases must be given, and upon the costs being marked upon the judgment the defendant will be entitled immediately to issue a *Fi. fa.* (see Form No. XVIII.), or summon the plaintiff under a judgment summons.

CHAPTER XII.

DISCONTINUANCE AND STAY OF PROCEEDINGS.

Discontinuance.—The plaintiff may at any time discontinue his action, and if the service of the plaint has not been effected he may withdraw his action by filing a withdrawal (Form No. XXIII.), and if the service has been effected he may still withdraw his action as above mentioned, or he may discontinue by rule; and if notice of the withdrawal, or a copy of the rule to discontinue, be served upon the defendant before he shall have appeared to the action, the plaintiff will not have to pay costs.

If the defendant have appeared, the plaintiff may obtain the rule, but then it must be upon payment of costs. If the rule is obtained after the defendant has appeared, and before delivery of declaration, then the costs are marked upon the rule; if under Twenty pounds, 15s. 8d.; above Twenty pounds, 19s. 2d.; and if a demand of declaration has been given then 3s. is added under Twenty pounds, and 4s. above Twenty pounds, and which costs must be paid within one day from the taxation; or according to the terms of the rule, the defendant may make up a record and sign judgment for the costs taxed, and costs of making up the record and judgment. (Form of Record and Judgment of *Non pros*, No. XXII.) The defendant may thereupon immediately issue execution.

The order is obtained *ex parte*, upon application by a *Præcipe*.—Form No. XXIV.

Rule to stay on terms.—When the plaintiff is willing to take his debt by instalments, and the terms are agreed upon, he should draw up a rule by consent to that effect. If the defendant have appeared, it is sufficient to obtain the consent of the defendant as to the time of payment, and the terms in case of default, and, upon filing that in the Registrar's office, a rule will be granted upon the terms of the consent; the consent should be somewhat in the Form No. XXV.

This may be done without any appearance by the defendant in the action. The amount of costs may also be agreed upon or taxed as between party and party, or between attorney and client. The order is an order of the court itself, and not of a judge, and therefore it is presumed it does not require to be filed as a judge's order in the superior courts.

Should the defendant make default in payment, and the judgment has been signed, the plaintiff then issues his execution. If the judgment has not been signed, the plaintiff adopts the same method as to signing judgment; but in the judgment docket it must be entered as "default under rule," and the judgment will be in the Form No. XXVI. The costs of the judgment will be marked at once in actions under Twenty pounds, *9s. 6d.*; above Twenty pounds, *15s. 4d.*, without notice of taxation, and execution may issue immediately; upon signing the judgment the original rule must be annexed to the judgment docket.

Payment of smaller sum than sued for.—If the amount of debt in the particulars at the foot of the copy action served upon the defendant is more than is due to the plaintiff, the defendant may tender the amount he considers due, together with the costs, or he may at any time before plea pleaded, apply in the usual manner for an order to stay proceedings on payment of the sum tendered, or any other amount for debt, together with the costs of the action; but if the plaintiff accepts the sum tendered in satisfaction of his demand, or any smaller sum than mentioned in the plea, and it should appear to the court that the amount indorsed was more than was due, and the defendant was prevented settling the action from that cause, the court will not direct any further costs to be paid than the bare costs of the action.

If the plaintiff attend and then refuses to take it in discharge of his claim, the application and offer is marked by the Registrar, and if the plaintiff subsequently accept it the defendant is entitled to his costs incurred subsequent to the application and refusal. It is necessary, however, that the defendant should get his application marked by the Registrar, and should follow up his offer by paying the money into court upon his plea.

Where the defendant is entitled under the rule to costs incurred subsequent to refusal, he may set them off against the costs to which the plaintiff is entitled.

If the plaintiff or his attorney do not attend, the order to stay on payment of the smaller sum may be obtained upon an affidavit being made of the service of the notice.

CHAPTER XIII.

REMOVAL OF CAUSES, ORDERS, ETC.

1. BEFORE JUDGMENT.

2. AFTER JUDGMENT AND REMOVAL OF ORDERS.

1. BEFORE JUDGMENT.

No cause can be removed from the Mayor's Court otherwise than by a writ of *Certiorari*, or by the order of a judge of one of the superior courts at Westminster (a).

No cause, wherein the debt or damage sought to be recovered does not exceed Fifty pounds, can be removed into a superior court before judgment, unless the defendant and two sureties become bound in a sufficient sum

(a) Mayor's Court Procedure Act, § 52.

for the payment of the debt or damage and costs, except by the order of a judge of any of the superior courts at Westminster, who may in his discretion order a writ of *Certiorari* to issue to remove any such cause without such recognizance.

No cause can be removed before judgment into any of the superior courts at Westminster, unless the writ removing the cause shall have been lodged with the proper officer of the court within one month after the service of the plaint, or unless such writ shall have been lodged with such officer before such action shall have been entered for trial, according to the practice of the Mayor's Court.—Mayor's Court Procedure Act, § 17.

No cause can be removed after plea and before judgment, except by leave of a judge of one of the superior courts at Westminster, in cases which shall appear to such judge fit to be tried in one of the superior courts, and then upon such terms, if any, as to payment of costs, or damages and costs, or such other terms as he may think fit. The application must be made by summons.—Mayor's Court Procedure Act, § 19.

The writ should be directed to the mayor and aldermen as judges of the Mayor's Court, and is made returnable immediately, whether in or out of term.—See Form of Writ, No. XXVII.

If a judge's order is necessary, then a summons must be taken out in one of the superior courts; and if the order for removal is made, it is an order that a writ of *Certiorari* do issue. This order is filed at the writ office upon sealing the writ, and a copy of the order is taken with the *Certiorari*, which should be still in the usual form, and left in the office of the Registrar of the Mayor's Court.

From the time that the writ is so lodged with the Registrar, and allowed by him, it acts as a stay of proceedings, and all matters done in the cause after that is in contempt of the writ. By the practice of the Mayor's Court, the Registrar gives notice to the plaintiff of the writ having been lodged. The return to the writ is prepared in the Registrar's office, and the defendant's attorney must apply for it and file it.

If the cause to be removed is a cause wherein the debt or damage sought to be recovered does not exceed Fifty pounds, and no judge's order for removal has been obtained, notice of the defendant's intention to remove the cause must be given to the plaintiff's attorney. (See Form No. XXVIII.) This notice must contain the names of two persons, housekeepers, and specify the time of their attendance at the office of the court, which must be within the hours of twelve and two o'clock, and must be given to the plaintiff's attorney two days beforehand, to enable him to make inquiries as to their responsibility; and should the plaintiff or his attorney attend at the time named, and object to their sufficiency, they may justify before the Registrar, and if allowed they must with the defendant enter into the recognizance (b) to pay the debt or damages and costs, in case judgment shall pass against the defendant in the superior court, or in case the cause shall be brought back by *Procedendo* in the Mayor's Court. See Form *Procedendo*, No. XXIX.

If the plaintiff do not attend at the time mentioned in the notice, or within half an hour therefrom, upon an affidavit of the due service of the notice being made, the Registrar will take the required recognizances and make a return to the writ accordingly, and it is then filed as in other cases. After filing the writ the defendant should enter an appearance.

(b) A sum sufficient to cover the debt or damage sued for, and a reasonable amount for costs, in ordinary cases about Fifty pounds. If the cause is to be removed under the 7th and 8th Geo. IV., c. 71, § 8, where the cause of action does not amount to Twenty pounds the recognizance will be the same as above, except that the amount must be double the amount of the debt or damage.

The plaintiff may at any time after the return of the writ compel the defendant to appear by obtaining from one of the judge's clerks a rule for a *Procedendo*, unless the defendant appears within four days after the notice thereof.

If there be several defendants, and the cause be removed by one, an appearance must be entered for all, otherwise a *Procedendo* may be obtained (c).

If the writ of *Certiorari* has been issued where it would not lie, or if it be misdirected or otherwise bad in point of law, it may be quashed by the court or a judge, and a *Procedendo* awarded; but if the writ has not been returned it cannot be quashed, but a *Supersedeas* will be awarded.— And see further as to *Certiorari* and *Procedendo*, Chitty's Archb. 11th edition, 1314, 1315.

Whatever bail the plaintiff is entitled to in the Mayor's Court he is entitled to in the superior court upon removal. If, therefore, there is an ordinary action in the Mayor's Court with a common appearance, a common appearance is sufficient in the court above; but if an attachment is made in the Mayor's Court the action and attachment cannot be removed into the superior court, and the defendant allowed to appear, without special bail in dissolution of the attachment, because no bail but special bail can be accepted for the defendant in the court below, in dissolution. So also when an attachment is made in the Mayor's Court, and it is dissolved by special bail, and the cause is removed, then the defendant must put in special bail, although defendant may be an executor (d).

After the cause has been removed in the court above the plaintiff may proceed or not as he thinks fit, and the defendant cannot *Non pros* him (e) for not declaring, for there are no continuances from the court below to the court above, for when a cause is taken from an inferior to a superior court they do not proceed as in the court below, for it is beneath the higher jurisdiction so to proceed, or not to proceed upon it as *res integra*, or to suffer any continuance to be made from a subordinate power to theirs (f); and therefore if the plaintiff proceed in the court above he must begin by declaration against the defendant (g). The plaintiff may, it seems, declare in a different form of action from that in the court below, provided it be the same cause of action (h), and not for a larger amount (i).

If the writ is brought to remove a cause over which the superior court has no jurisdiction, such as an action of defamation for calling a woman a strumpet, or a penalty under an Act of Common Council, still a return must be made of the special matter, otherwise the court above will not know the subject of the action. This return must be supported by an affidavit, and it is said generally if the defendant, upon removing a suit commenced against him, does not comply with the statute and rules of court made to regulate the proceedings therein upon such removal, as by not pleading in due time to the declaration delivered, or the like, the plaintiff may obtain a *Procedendo* (k).

After a cause has been remanded it can never afterwards be removed

(c) *Kent v. Goldstein*, 7 B. and C. 525, 1 M. and R. 305; *Jameson v. Schonswar*, 1 Dowl. 176.

(d) *Day v. Paupiere*, 13 Q. B. 602, 7 D. and L. 12. See *Tassie v. Kennedy*, 5 D. and L. 587. When special bail was not put in, see *Scarnett v. Price*, 1 Dowl. N.S. 333.

(e) See further, Chitty's Archb. 11th edition, 1316.

(f) Gilb. Exc. 144, 200; F. N. B. 71; Gilb. Rep. 117; Tidd, 8th edition, 413; *Davis v. James*, 1 T. and R. 372.

(g) See further, Prent., Chitty's Archb., 11th edition, 1816.

(h) *Gunn v. Machenry*, 1 Wils. 277; *Bowerbank v. Walker*, 2 Chit. Rep. 519; Tidd 8th edition, 411, 413.

(i) *Wyatt v. Evans*, 3 Salk. 55, per Cur.; *Bowerbank v. Walker*, 2 Chit. Rep. 518.

(k) Chitty's Archb., 11th edition, 1315.

before final judgment (1).—And see Costs.—As to Appearance after Removal, see Rules 115, 116, and 117, Hil. 1853.

2. REMOVAL OF CAUSES AFTER JUDGMENT, AND REMOVAL OF ORDERS.

It is unnecessary, of course, to remove any judgment or order of the Mayor's Court, if the person to whom the payment is to be made can obtain satisfaction by the process of the Mayor's Court, but it is not a condition that he cannot obtain such satisfaction to enable him to remove his proceedings, neither need he issue his writ of *Fi. fa.* prior to removing the proceedings. The 22d section of the 1st and 2d Vict., c. 110, enacts that where any rule or order shall have been made, whereby any sum of money, or any costs, charges, or expenses shall be payable to any person, such judgment or order may be removed into any of the superior courts at Westminster, and thereupon any writ of execution issued upon such judgment; and any such judgment, rule, or order will become and be of the same force, charge, and effect, as a writ of execution, or a judgment recovered in, or a rule or order made by, such superior courts. Judgments of inferior courts, when removed, shall be registered to bind lands, 18th and 19th Vict., c. 15, § 7.

The 48th section of the Mayor's Court Procedure Act has the same effect, although it does not remove the judgment or order from the Mayor's Court.

The proceeding under this last Act is thus effected. The record is entered up, and is signed by the Registrar or his deputy, or in case of an order of the court the order is signed. An affidavit is then made in the Mayor's Court in the Form No. XXX. as the case may be; a *Præcipe* is also made in the Form No. XXXI. The *Præcipe* and affidavit are then taken to the writ office of the superior court and filed, and the judgment or order is sealed. The plaintiff or defendant may then act upon it as on a judgment or order of the superior courts. No judgment or order, however, when removed will affect any lands, tenements, or hereditaments, as to purchasers, mortgagees, or creditors, any further than the same would have done if the same had remained a judgment or order of the Mayor's Court, unless and until a writ of execution thereon shall be put into the hands of the sheriff or other officer appointed to execute the same.—And see 19 Geo. III., c. 70, § 4.

CHAPTER XIV.

JUDGMENT SUMMONS.

By the Debtors Act 1869, 32 and 33 Vict., c. 62, imprisonment for debt is abolished with certain exceptions.

The only exceptions necessary here to mention are—

Default by a trustee or person acting in a fiduciary capacity, and ordered to pay by a Court of Equity any sum in his possession or under his control.

Default by an attorney or solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the court making the order.

Default in payment of sums in respect of the payment of which orders are in the Act authorized to be made.

(1) 21 Jac. I., c. 23, § 3. And see *Laws v. Hutchinson*, 3 Dowl. 506; *Dixon v. Histop*, T. R. 365, 1 C. M. and R. 766; *Glynn v. Hutchinson*, 3 Dowl. 529, 2 Ad. and El. 660.

In the cases before excepted the court may direct any sum due from any person in pursuance of any order or judgment of the Mayor's Court, or any court other than a County Court, provided it does not exceed £50, exclusive of costs, to be paid by instalments, and may from time to time rescind or vary such order, and may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any such order; but no person is to be imprisoned for a longer period than one year.

It must be proved to the satisfaction of the court that the person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

By the 5th section of the Act, proof of the means of the person making default may be given in such manner as the court thinks just, and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath according to rules to be made.

The power of committal can only be exercised by the judge or his deputy, and by an order made in open court, and showing on its face the ground upon which it is issued.

It can only be exercised as respects a judgment of a superior court of Law or Equity when such judgment does not exceed £50, exclusive of costs.

Any person so imprisoned may be discharged out of custody upon payment of the debt, or instalment of a debt, in respect of which he is imprisoned, as appears by the order, together with the costs, if any.

No judgment or order for payment of any money is in any manner affected by the Act, except as regards the imprisonment of the debtor, and no imprisonment is to operate as a satisfaction or extinguishment of any debt or demand, or cause of action, or deprive any person of any right to take out execution against the lands, goods, or chattels of the person imprisoned in the same manner as if such imprisonment had not taken place.

The custom of foreign attachment is not affected by the Act.

RULES MADE IN PURSUANCE OF THE ACT.

Any judgment debtor may be summoned at the request of a judgment creditor, which request shall be in Form No. XXXII.

The summons shall be in Form No. XXXIII.

The service of every summons, whenever it is practicable, shall be personal service; but if it appear to the judge or his deputy that reasonable efforts have been made to effect personal service, and either that the summons has come to the knowledge of the debtor, or that he wilfully evades service, an order may be made as if personal service had been effected, upon such terms as the judge or his deputy may think fit.

The order shall be in Form No. XXXIV.

The committal shall be in Form No. XXXV.

Except by special leave of the judge or his deputy, no commitment for nonpayment of any sum shall be issued without notice being given or sent to the debtor that such commitment has been ordered, but such notice need only be sent to the debtor by post or otherwise without personal service.

Proof of such notice having been sent may be made by affidavit, and

such affidavit must set out the particulars of how and when such notice has been sent.

Proof of the means of the debtor may be made orally or by affidavit, or if it appear to the judge or his deputy, either before or at the hearing or any adjournment thereof, that a *vidé voce* examination of the debtor or of any other person, or the production of any book or document, is expedient or necessary, an order may be made commanding the attendance of such person, or the production of such book or document. The disobedience to any such order shall be deemed a contempt of court, and punishable accordingly.

The hearing of any summons may be adjourned, if the judge or his deputy shall think fit, to a day and time to be named, and if the debtor shall have appeared on the day on which it is adjourned, no further notice thereof shall be required of such adjournment; but if the debtor shall not have appeared, then notice of such adjournment shall be sent to the debtor.

Upon every commitment shall appear the amount of the debt or the instalments due, and for the nonpayment of which the debtor is committed.

Upon payment of the sum mentioned in the commitment, together with the fees of the court and Serjeant-at-Mace, the debtor shall be entitled to his discharge.

The Governor of the Debtors Prison may receive the sum mentioned in the commitment, together with the fees, as specified in these Rules, and thereupon, or upon certificate of the Serjeant-at-Mace or his deputy that the same has been satisfied, discharge the debtor.

No commitment shall be in force concurrently with a writ of *Fi. fa.* for the same debt.

The judgment record or order upon which the debtor is summoned shall be produced in court at the hearing of any summons.

The costs of the summons and commitment, and of any writ of *Fi. fa.* issued on the judgment, or of any previous summons or summonses, not served by reason of the debtor having evaded service, shall be in the discretion of the court, and ordered at the hearing of the case.

Any witness may be summoned to prove the means of the debtor, or for the production of any book or document, by a summons in the Form No. XXXVI.

Such summons shall be served three clear days before the hearing of the case.

The list of summonses will be called over at fifteen minutes after the time named, as the return of any summons or the time named as the adjournment of the same; and if, on a case being called on, the debtor does not appear it will be heard in his absence; and if the creditor does not appear it will be struck out.

The court will hear any summons in which the parties are ready at the time mentioned as the return of the same, or at the time mentioned as the adjournment thereof, notwithstanding that the fifteen minutes above mentioned may not have expired. Evidence of the service of any Summons may be given either in court orally or by affidavit.

When personal service has not been effected, no order to pay or commit will be made, unless it be approved in open court to the satisfaction of the judge or his deputy that reasonable efforts have been made to effect personal service, and either that the summons has come to the knowledge of the debtor, or that he wilfully evades service; but when personal service has been effected, an affidavit of the service may be made at any time before the order to pay or commit is issued.

The order to pay is only required to be drawn up and served upon the debtor in case he fails personally to appear upon the hearing of the summons.

No commitment will be issued after the expiration of one calendar month from the time of the same being ordered, without leave of the court.

A commitment will only remain in force for six calendar months, and if not executed within that time it can only be renewed by leave of the court.

After an order of commitment has been made, if a creditor, or his attorney on his behalf, receive any money on account thereof, the commitment will not be executed by the Serjeant-at-Law, unless such money has been received by leave of the court, or the court order such commitment to be executed, notwithstanding the receipt of such money.

The costs of any summons and hearing, and of the order or commitment, are in the discretion of the court, and must be applied for at the hearing of the case. In ordinary cases the following will be allowed where the debt, exclusive of all costs, is—

	Under £10.	£10 and under £20.	£20 and upwards.
Application for summons, and } paid }	—	... 2s. 6d.	... 2s. 6d.
Copy and service of summons,	2s. 6d.	... 2s. 6d.	... 2s. 6d.
Attending the hearing ...	3s. 4d.	... 3s. 4d.	... 6s. 8d.
Copy and service of order } where debtor does not ap- } pear }	1s. 0d.	... 3s. 0d.	... 4s. 0d.
If commitment ordered where } debtor does not appear, notice } of commitment and affidavit }	2s. 0d.	... 4s. 0d.	... 5s. 0d.

CHAPTER XV.

ARBITRATION.

1. REFERENCE BY CONSENT.

2. COMPULSORY REFERENCE BY COURT.

1. REFERENCE BY CONSENT.

ALL causes in the Mayor's Court may be referred to arbitration by consent of the parties, at any time before the jury are sworn, and after that by leave of the court.

The method generally adopted before the jury is sworn is to refer the cause, either with or without all matters in difference, to some person agreed upon, or in case of disagreement as to the arbitrator, to some person named or suggested by the court, giving power to the arbitrator to certify his determination; and the order of reference gives to the Registrar of

the court authority to enter up judgment according to the tenor of the certificate. If the jury are sworn, then it is usual to take a verdict subject in the same manner to be varied according to the terms of the certificate, the Registrar, as before, having authority to act upon the certificate.

The draft rule of reference may be obtained, gratis, in the Registrar's office (Form No. XXXVII.), containing the different terms of a reference; those terms which the parties do not agree upon are to be struck out, and any other added that may be required: it is then signed by the attorneys or suitors, and the rule is drawn up in accordance therewith. This form is adopted where the parties are content with the certificate of the arbitrator, but if a formal award is required, then the form may be altered to suit circumstances.

It is unnecessary here to enter into any detail of the proceedings before an arbitrator, as they are in all respects similar to the proceedings in arbitrations from other courts.

In case it is necessary to compel the attendance of a witness, or for the production of any documents, a note of the name of the cause and the witness, and the documents required, is filed with the Registrar, and thereupon an order is made for the attendance and production; and if this is disobeyed, it is contempt of court.—And see Examination of Witnesses, under order of the court, Chapter VII.

For Form of judgment under the rule and certificate, see Form No. XXXVII.

2. COMPULSORY REFERENCE BY COURT.

The compulsory arbitration clauses under the Common Law Procedure Act 1854, are applied to the Mayor's Court.

Section 3.—Power to court or judge to direct arbitration before trial.

This section appears to have been read by the courts in a very liberal manner, when it is evidently for the benefit of the suitors that this course of proceeding should be taken. The court may under this section refer the whole matter when part of it appears to be a matter of account, or a part of it only; but the court cannot refer more than the cause, it cannot refer all matters in difference.

Section 4.—Special case may be stated and question of fact tried.

Section 5.—Arbitrator may state special case.

Section 6.—Power to judge to direct arbitration at time of trial when issues of fact left to his decision.

Section 7.—Proceedings before, and power of such arbitrator.

Section 8.—Power to send back to arbitrator.

Section 9.—Application to set aside award.

Section 10.—Enforcing of awards within period for setting them aside.

Section 11.—If action commenced by one party after all have agreed to arbitration, court or judge may stay proceedings.

Section 12.—On failure of parties or arbitrators, judge may appoint single arbitrator or umpire.

Section 13.—When reference is to two arbitrators, and one party fail to appoint, other party may appoint arbitrator to act alone.

Section 14.—Two arbitrators may appoint umpire.

Section 15.—Award to be made in three months unless parties or court enlarge time.

Section 16.—Rule to deliver possession of land pursuant to award to be enforced as a judgment in ejectment.

Section 17.—Agreement or submission in writing may be made rule of court unless a contrary intention appear.
 And see 3 and 4 Wm. 4, c. 42, §§ 39, 40, 41; and 14 and 15 Vict. c. 99, § 16. And see Common Law Procedure Act 1852, § 94.—Inquiry of damages may be directed to take place before the Registrar.

CHAPTER XVI.

INTERPLEADER.

1. FOR RELIEF OF PERSONS GENERALLY.

2. FOR RELIEF OF SERJEANT-AT-LAW IN EXECUTION OF PROCESS AGAINST GOODS.

1. FOR RELIEF OF PERSONS GENERALLY.

By section 32 of the Mayor's Court Procedure Act (Appendix No. 1), upon application made by or on behalf of any defendant in an action in the court, such application being made after declaration and before plea by affidavit or otherwise, showing that such defendant does not claim any interest in the subject matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same; and that such defendant does not in any manner collude with such third party, but is ready to bring into court, or to pay or dispose of, the subject matter of the action in such a manner as the court may order or direct, it shall be lawful for the Registrar to issue a summons calling upon such third party to appear in court and to state the nature and particulars of his claim, and to maintain or relinquish his claim, which summons may be served upon such third party in any part of England or Wales; and upon such summons the court may hear the allegations as well as of such third party as of the plaintiff, and in the meantime stay the proceedings in such action, and finally order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more issue or issues, and also direct which of the parties shall be plaintiff or defendant on such trial, or, with the consent of the plaintiff and such third party, their counsel or attorneys, dispose of the merits of their claims, and determine the same in a summary manner, and make such rules and orders therein as to costs and all other matters as may appear to be just and reasonable.

A copy of the summons must be served upon the plaintiff or his attorney.

The affidavit in support of the application should be entitled in the original cause, and made by the defendant or some other party, showing facts to bring the case within the statute, and should show that the plaintiff has declared, and defendant has not pleaded. The summons, it will be seen, may be served in any part of England or Wales. Where two actions are pending, application should be made in each (*a*).

By section 33 of the same Act, the judgment in any such action or issue, as may be decreed by the court, and the decision of the court in a summary manner shall be final and conclusive against the parties, and all persons claiming by, from, or under them.

(a) *Allen v. Gibby*, 3 Dowl. 143.

By section 34 of the same Act, if such third party shall not appear upon such summons to maintain or relinquish the claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the court to declare such third party, and all persons claiming by, from, or under him, to be for ever barred from prosecuting his claim against the original defendant, his executors, or administrators, saving nevertheless the right or claim of such third party against the plaintiff, and thereupon to make such order between such defendant and the plaintiff as to costs and other matters as may appear just and reasonable.

The following sections of the Common Law Procedure Act 1860, relating to Interpleader, have been applied to the Mayor's Court.

Section 12.—Interpleader may be granted though titles have not a common origin.

Section 14.—Power to court or judge to decide summarily in certain cases.

Section 15.—Special case may be stated where facts undisputed.

Section 16.—Proceedings on special case in court below and in error.

Section 17.—Judgment and decision when to be final.

Section 18.—Rules, orders, &c., made in interpleader proceedings may be entered of record and made evidence.

Under section 51 of the Common Law Procedure Act 1854, interrogatories may be delivered by the plaintiff to the defendant in an interpleader issue (b). And section 34 of that Act, allowing appeal on motions, has been held to apply to interpleader (c).

2. FOR RELIEF OF SERJEANT-AT-MACE IN EXECUTION OF PROCESS AGAINST GOODS.

By the Mayor's Court Procedure Act 1857, § 35 when any claim shall be made to or in respect of any goods or chattels taken or intended to be taken in execution under the process of the court, or to or in respect of the proceeds or value thereof by any landlord for rent, or by any person not being the party against whom such process has issued, it shall be lawful to and for the Registrar, upon application of the serjeant-at-mace or any of his officers, made before or after the return of such process, and as well before as after any action brought against such serjeant-at-mace or any of his officers, to issue a summons calling before the court as well the party issuing such process as the party making such claim; and thereupon any action which shall have been brought in any of the superior courts, or in any local or inferior court of record, in respect of such claim, shall be stayed, and the court in which such action shall have been brought, or any judge thereof, on proof of the issue of such summons and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons; and the said court shall thereupon exercise for the adjustment of such claim, and the relief and protection of the said serjeant-at-mace or any of his officers, all or any of the powers and authorities hereinbefore contained, and make such rules and decisions as shall appear to be just according to the circumstances of the case; and the costs of all such proceedings shall be in the discretion of the court.

(b) *White v. Watts*, 31 Law J. Rep. C.P. 381.

(c) *Withers v. Parkes*, 4 H. and N. 524, 810.

Section 13 of the Common Law Procedure Act 1860, giving the court power to direct a sale of goods seized in execution, applies to the Mayor's Court, and see 7 and 8 Vict. c. 96, § 68,

Sections 12, 14, 15, 16, 17, and 18 of the Common Law Procedure Act 1860, applied to the Mayor's Court, referred to *ante*, p. 46, apply to proceedings for relief of the officer of the court executing process against goods. And see *ante*, p. 2; and see Prentice, Chitty's Archb. 11th edit., 1380,—Interpleader.

CHAPTER XVII.

BILLS OF EXCHANGE AND PROMISSORY NOTES SUMMARY PROCEDURE ACT.

THE Summary Procedure on Bills of Exchange Act, 1855, 18 and 19 Vict. c. 67, is applied by the Queen in Council to the Mayor's Court, with the exception of sections 8, 9, 10.

[*These sections are to be read as if the word* *plaint had been used instead of the words* *writ of summons, or writ.*]

Section 1.—Actions on bills of exchange, &c., may be by writ of summons in form in Schedule (A). Plaintiff on filing affidavit of service may at once sign final judgment, in form in Schedule (B).

Section 2.—Defendant showing a defence upon the merits to have leave to appear.

Section 3.—Judgment may under special circumstances be set aside.

Section 4.—Judge may order bill to be deposited with officer of court in certain cases.

Section 5.—Remedy for the recovery of expenses of noting non-acceptance of dishonoured bill.

Section 6.—Holder of bill may issue one summons against all or any of the parties to the bills.

Section 7.—Common Law Procedure Acts and Rules incorporated with this Act.

Section 11.—Short title.

The proceedings under this Act do not differ from the ordinary actions in this court as to the manner in which they are entered. The notices, however, under the *plaint* are in a special form.—See Form No. XXXVIII.

The defendant has twelve days to appear, *inclusive* of the day of service.

The service must be personal service, with a sealed copy; or by order for substituted service as in ordinary cases. See as to service, &c., Chap. III.

All the proceedings under the various sections directed to be taken before the court or judge may be taken before the Registrar in the usual manner, upon notice. For Judgment Record in default of appearance, see Form No. XXXIX.

If the defendant obtains leave and appears, the plaintiff may proceed in the usual way with the declaration, as under the Common Law Procedure Act 1852, or by the *concessit solvere* as in ordinary actions.

CHAPTER XVIII.

EJECTMENT.

THE Mayor's Court has jurisdiction in the action of ejectment. The practice used formerly to be the same as in the superior courts prior to the Common Law Procedure Act 1852. With respect to actions of ejectment between landlord and tenant, the following sections of that Act are applied to the Mayor's Court. The practice will be as nearly as possible the same as in the superior courts, collateral matters being according to the ordinary practice of the Mayor's Court.

Section 168.—Ejectment to be brought by writ.

Section 169.—Form and duration of writ of ejectment.—(See Form No. XL.)

The action is entered in the same way as the ordinary action of debt by *præcipe* (Form No. I.). The writ and copy are sealed in the office of the court at the time of the entry of the action.

Section 170.—Service of writ of ejectment.

The service of the writ is by delivering a sealed copy of the writ to the person upon whom such service is required, or by substituted service. (See as to service, &c., Chap. III.)

Section 171.—Appearance of persons named in the writ.

Section 172.—Appearance of persons not named.

Where a person not named in the writ in ejectment has obtained leave of the court to appear and defend, he must enter an appearance according to the practice of the court (see note to section 173), entitled in the action against the party or parties named in the writ as defendant or defendants, and must forthwith give notice of such appearance to the plaintiff's attorney, or to the plaintiff if he sues in person.

Section 173.—Appearance and defence by landlord.

The appearance is entered in the office of the court in the usual manner of appearances, and notice thereof sent to the plaintiff's attorney.—Forms Nos. V. and VI.

Section 174.—Notice to defend for part only.

Section 175.—Want of certainty cured by particulars.

Section 176.—Defence by persons not in possession.

Section 177.—Judgment for default of appearance or defence.—See Form in Schedule (A.) to Act.

No judgment in ejectment for want of appearance or defence, whether limited or otherwise, can be signed without an affidavit of the service of the writ, or where personal service has not been effected, without first obtaining an order of court authorizing the signing such judgment, which order, or a duplicate thereof, must be filed, together with a copy of the writ.

Section 178.—Issue how made up.—See Form in Schedule (A.) to Act.

Section 179.—Special case may be stated.

Section 180.—Trial of issue.

Section 181.—Verdict when title appears to have expired before trial.

Section 182.—Trial may be ordered to take place in any county.

Section 183.—Non-appearance at trial.

If the plaintiff in ejectment appears at the trial, and the defendant does

not appear, the defendant will be taken to have admitted the plaintiff's title, and the verdict will be entered for the plaintiff without producing any evidence, and the plaintiff will be entitled to judgment for his costs of suit as in other cases.

Section 184.—Special verdict and bill of exceptions.

Section 185.—Judgment upon finding for claimant.

Section 186.—Judgment upon finding for defendant.

Section 187.—Execution for recovery of possession and costs may be joint or separate. (For Form of Writ of Possession upon a Judgment by default, see Form XL.)

Section 188.—Defence by joint tenants, tenants in common, or coparceners.

Section 189.—Trial and judgment in ejectment against joint tenants, tenants in common, and coparceners.

Section 190.—Action not to abate by death.

Section 191.—Proceeding upon death before trial where right survives.

Section 192.—Proceedings upon death before trial where right does not survive.

Section 193.—Upon death of one of several claimants having obtained a verdict.

Section 194.—Proceedings in case of death of claimant where right does not survive.

Section 195.—Proceedings upon death of one of several joint defendants.

Section 196.—Upon death of all the defendants in ejectment before trial.

Section 197.—Upon death of all defendants in ejectment after verdict.

Section 198.—Upon death before trial of defendant in ejectment who defends separately for part.

Section 199.—Upon death of defendant defending separately for property, in respect of which others also defend.

Section 200.—Claimant may discontinue by notice.

Section 201.—Discontinuance of action by one of several claimants.

Section 203.—Defendant may confess the action.

Section 204.—Confession by one of several defendants defending separately for part.

Section 205.—Confession by one of several defendants who defend for same property.

Section 206.—Formal entry of judgment on the roll unnecessary for purposes of execution.

Section 207.—Effect of judgment.

Section 208.—Error and bail in error in ejectment.

Section 209.—Tenants to give notice of ejectment to landlord.

Section 210.—Proceedings in ejectment by landlord for non-payment of rent.

Section 211.—Lessee proceeding in equity not to have injunction or relief without payment of rent and costs.

Section 212.—Tenant paying all rent, with costs, proceedings to cease.

Section 213.—Ejectment by landlord against tenant holding over after expiration of term or determination of tenancy by notice to quit. Rule or summons for the tenant to give bail. On rule or summons absolute, if tenant shall not conform, judgment to be for the landlord.

Section 214.—On trial of any ejectment between landlord and tenant, juries to give damages for mesne profits down to the verdict, or to a day specified therein.

Section 215.—On trials after bail found, judge shall not stay the execution, except by consent, or on tenant's finding security. Bail in error to discharge such security.

Section 216.—Recognizances to be taken as other recognizances of bail, actions on them limited.

Section 218.—Saving of former remedies.

Section 219.—In ejectment by mortgagee, the mortgagor's rendering the principal interest and costs in court shall be deemed a full satisfaction, and the court may compel the mortgagee to reconvey.

Section 220.—Not to extend to cases where the right of redemption is controverted, or the money due not adjusted, or to prejudice any subsequent mortgage.

Section 221.—Jurisdiction of courts and judges.

The 93rd section of the Common Law Procedure Act 1854 is also applied to the Mayor's Court.

Section 93.—Claimant in second ejectment for same premises against same defendant may be ordered to give security for costs.

The 1st, 2nd, and 3rd sections of the Common Law Procedure Act 1860 are also applied to the Mayor's Court.

Section 1.—Relief against forfeiture for non-payment of rent.

Section 2.—Relief against forfeiture for non-insuring.

Section 3.—Minute of relief granted.

And see Arbitration; Appeal.

CHAPTER XIX.

AMENDMENTS.—MISJOINDER AND NONJOINDER OF PARTIES.

—DEATH, MARRIAGE, OR BANKRUPTCY OF PARTIES.

AMENDMENTS.

INDEPENDENTLY of the power of amendment at common law, the sections of the Law Amendment Act, 3 and 4 Wm. IV., cap. 42, relative to amendments, apply to the Mayor's Court. By the Mayor's Court Procedure Act, § 23, the court may at all times amend all defects and errors in any proceeding whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made, and all such amendments may be made with or without costs, or upon such terms as to the court shall seem fit.

The following sections of the Common Law Procedure Acts also apply to the court.

Section 96. Common Law Procedure Act 1854.

Section 36. Common Law Procedure Act 1860.

And see Misjoinder and Nonjoinder of parties.

MISJOINDER AND NONJOINDER OF PARTIES.

The following sections of the Common Law Procedure Acts are applied to the Mayor's Court.

Misjoinder and Nonjoinder of Plaintiff.

Common Law Procedure Act 1852 :

Section 34.—Nonjoinder and misjoinder of plaintiffs may be amended before trial.

Section 35.—Nonjoinder and misjoinder of plaintiffs may be amended at the trial, as in cases of amendments of variances under 3 and 4 Wm. IV., cap, 42.

Section 36.—Upon notice or plea of nonjoinder of plaintiffs, proceedings may be amended.

Whenever a plaintiff shall amend the plaint after notice by the defendant, or a plea in abatement of a nonjoinder, he must file a consent in writing of the party or parties whose name or names are to be added, together with an affidavit of the handwriting, and give notice thereof to the defendant, unless the filing of such consent be dispensed with by order of the court.

And see section 40, joinder of claims by husband and wife with claims in right of husband.

Common Law Procedure Act 1860 :

Section 19.—Joinder as plaintiffs of all persons supposed to be legally entitled.

And see sections 20, 21, defendant's set-off in such case.

Misjoinder and Nonjoinder of Defendants.

Common Law Procedure Act 1852 :

Section 37.—Misjoinder of defendants may be amended before or at the trial.

Section 38.—Upon plea in abatement for nonjoinder of defendants, proceedings may be amended.

Section 39.—Provision in the case of subsequent proceedings against the persons named in a plea in abatement for nonjoinder of defendants. And see section 60, commencement of declaration after plea of nonjoinder, and note to section 36.

Where one of two joint debtors is omitted in an action, the nonjoinder cannot be pleaded in abatement unless the person omitted resides within the city.—See Plea, and affidavit in support thereof.

DEATH, MARRIAGE, OR BANKRUPTCY OF PARTIES.

The several sections of the Common Law Procedure Acts relative to the non-abatement of actions by the death, marriage, or bankruptcy of any of the parties to the suit are applied to the Mayor's Court.

Common Law Procedure Act 1852 :

Section 135.—Action not to abate by death.

Section 136.—Proceedings in case of death of one or more of several plaintiffs or defendants.

Section 137.—Proceedings in case of death of a sole plaintiff.

Section 138.—Proceedings upon death of sole or sole surviving defendant.

Section 139.—Death between verdict and judgment.

Section 140.—Proceedings in case of death after interlocutory and before final judgment.

Section 141.—Marriage not to abate action.

Section 142.—Bankruptcy and insolvency of plaintiff when not to abate action.

And in Error, sections 161 to 167 inclusive; and in Ejectment, sections 190 to 199 inclusive.

Common Law Procedure Act 1854 :

Section 92.—To compel continuance or abandonment of action in case of death.

CHAPTER XX.

MOTIONS, RULES, AND ORDERS.—AFFIDAVITS.—IRREGULARITY.—INFANCY.

MOTIONS, RULES, AND ORDERS.

A **MAYOR'S COURT** is held daily, but trials only take place at sittings appointed usually monthly. It appears that formerly the Registrar had some qualified authority to sit in the court as Judge before the Mayor's Court Procedure Act; but by the forty-first section of that Act he has power, in the absence of the Judge, to hold the court, and transact all the business of the court, except the trial of issues of law and fact. The Registrar therefore holds the court daily, at the office of the court, for the transaction of business.

All applications respecting collateral matters and proceedings should be made in the first instance to the Registrar. If the Judge, however, be sitting, and it be matter relative to the trial of any issue, as a motion for a new trial, the application may be made at once to the Judge.

All applications made to the Registrar may be made either by counsel or attorneys, but application to the Judge, unless sitting as at chambers, must be made by counsel.

If application be made to the Judge without a previous application to the Registrar, the court will not, except in special cases, or under particular circumstances, grant costs of the application. Notices of application must be in writing (see Form No. XLl.), and may be served at the office or place of residence mentioned in the last proceeding of the opposite party.

Notice given one day, if served before six o'clock p.m., is sufficient notice for an application before the Registrar on the next.

One notice of application is sufficient, and the time required to wait for the opposite party is fifteen minutes.

All notices of application not requiring personal service may be sent by post, so that they arrive before six o'clock on the day of posting.

All applications must be made between the hours of twelve and two. If however by omission a step may be taken by the opposite party before the return of the notice of application, as signing judgment for want of a plea, the court will upon application allow the return to be made at ten o'clock, if reason can be shown, but the notice must then state that it is by leave of the court.

If application is made to the Judge, and the party moving is desirous of obtaining a rule absolute in the first instance, he should state in his notice that he intends so to apply for a rule absolute, otherwise the rule will only be a rule to show cause.

The court may at any place within its jurisdiction hear motions, &c.—Mayor's Court Procedure Act, § 12.

Every court having authority by custom or statute to make rules and orders, has an implied power by the grant to enforce its orders and make provisions for the due administration of justice, and is therefore entitled to issue an attachment to enforce its proceedings.

The principle of granting or refusing costs on motions, &c., is the same as in the superior courts, except as regards the application to the Registrar in the first instance.

As to effect of order of court for payment of any sum of money, and costs, charges, and expenses, see 1 and 2 Vict. c. 110, §§ 18, 19. And see Mayor's Court Procedure Act, § 48,—Removal of Judgments and Orders.

It should be particularly borne in mind that any order made in a cause, similar to those made at chambers by the judges of the superior courts, is in the Mayor's Court an order of the court itself, and therefore it must be drawn up not later than the day following that on which it is made.

AFFIDAVITS.

Affidavits to be used in the Mayor's Court may be made before the Lord Mayor or any one of the Aldermen, the Recorder, the Registrar of the Mayor's Court, or his deputy; it may be made in any part of the United Kingdom, before a magistrate, or officer who has a general power to administer oaths, and if he sign the jurat and affix his seal of office it is sufficient; but in case he has not a seal of office then his signature must be verified in the Mayor's Court by affidavit, stating that the person before whom the affidavit purports to be sworn is empowered to administer oaths; and further, that the signature to the jurat is the signature of the person there designated, or that the deponent knows the signature of such officer or person who appears to have signed the jurat, and that he believes the same to be in his handwriting; but an affidavit made before a commissioner for taking affidavits, either in chancery or common law for England, is not sufficient, as they have but a limited power by statute.

Statutory Declarations will also be received if properly made before a Justice of the Peace.

Affidavits may be made in foreign countries, but rather more formality is required than in those sworn in the United Kingdom. If sworn before a judge of a court of justice, then an affidavit stating the office held by such judge, and his authority, and a verification of his signature, is sufficient; but if sworn before an ordinary magistrate, this should be attested by a notary public, or by any British ambassador, envoy, minister, *chargé d'affaires*, or secretary of embassy or of legation, exercising his functions in any foreign country, or before a British vice-consul, acting consul, proconsul, consular agent, consul-general, or consul; or they may be made in the first instance before any British ambassador, envoy, minister, *chargé d'affaires*, or secretary of embassy or of legation, exercising his functions in any foreign country, or before a British vice-consul, acting consul, proconsul, consular agent, consul-general, or consul, in which case if the seal of office be affixed, no authentication of such seal or signature is necessary. The addition and true place of abode of every person making an affidavit must be inserted therein; and, when made by two or more

deponents, the names of the several persons making the affidavit must be written in the jurat. No affidavit will be allowed to be read or made use of in any matter depending in the court in the jurat of which there shall be any interlineation or erasure.

Where any affidavit is sworn by any person who from his or her signature appears to be illiterate, the person before whom such affidavit is made must certify or state in the jurat that the affidavit was read in his presence to the party making the same, and that such party seemed perfectly to understand the same, and also that the said party wrote his or her mark or signature in his presence.

Affidavits on new matter and false evidence, see Common Law Procedure Act 1854, §§ 45, 89.

IRREGULARITY.

It is very difficult to determine what is to be deemed a nullity, or only an irregularity. Probably where any step is taken, warranted by the proceedings in the cause, and upon the face of it appears regular, but has defects to be ascertained by relation to other proceedings, such may be considered an irregularity; but, if the step is not warranted in the cause, and differs from that which ought to have been taken; or a proceeding bearing the invalidity upon its face, as a writ of summons dated on Sunday, or a plea in abatement without an affidavit, or supported by an affidavit which is of itself void, as an affidavit taken by a person without authority; or if the proceedings bear upon the face a want of form according to the rules of the court, then it may probably be considered a nullity.

No application to set aside process or proceedings for irregularity is allowed unless made within a reasonable time, nor if the party applying has taken a fresh step after knowledge of the irregularity.

Where an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon must be stated in the notice.

In all cases where a rule is obtained to show cause why proceedings should not be set aside for irregularity, with costs, and such rule is afterwards discharged generally without any special direction upon the matter of costs, it is to be understood as discharged with costs.

INFANCY.

Where a plaintiff or defendant is an infant, an application may be made *ex parte* to the court, for an order for liberty to sue or defend by next friend or guardian. (See Form of Application, and Consent of next Friend or Guardian, Form No. XLIII.) The application must be made before the entry of the action, or appearance, and a copy of the order must be served with the plaint or notice of appearance.

The plaintiff or defendant must be described in the plaint or appearance as "an infant, by —— his next friend (or guardian)."

CHAPTER XXI.

<i>Mandamus.</i>	[TION.	SPECIFIC DELIVERY OF CHATTELS.
INJUNCTION, AND WRIT OF INJUNCTION.	ATTACHMENT OF DEBTS.	ACTIONS ON LOST INSTRUMENTS.
<i>Scire facias</i> ON JUDGMENT OF ASSETS <i>in futuro.</i>		FALSE EVIDENCE.
		ASCERTAINING THE LAW OF FOREIGN COUNTRIES.

THE following sections of the Common Law Procedure and other Acts are applied to the Mayor's Court, but will not require any comment, as the practice of the superior courts relating to them will serve as a guide to that of the Mayor's Court:

MANDAMUS.

Common Law Procedure Act 1854:

- Section 68.—Action for *Mandamus* to enforce the performance of duties.
- Section 69.—Declaration in action for *Mandamus*.
- Section 70.—Proceedings upon claim for *Mandamus*.
- Section 71.—Judgment and execution.
- Section 72.—Form of peremptory writ.
- Section 73.—Effect of writ of *Mandamus*, and proceedings to enforce it.
- Section 74.—The court may order the act to be done at the expense of the defendant.
- Section 75.—Prerogative writ of *Mandamus* preserved.

Common Law Procedure Act 1860:

- Section 32.—Costs of writ of *Mandamus* and injunction may be included in writs.

INJUNCTION, AND WRIT OF INJUNCTION.

Common Law Procedure Act 1852:

- Section 226.—Injunctions and orders to stay proceedings to have a specific effect.

Common Law Procedure Act 1854:

- Section 79.—Claim of writ of injunction.
- Section 80.—Form of writ of summons and indorsement thereon.
- Section 81.—Form of proceedings and of judgment.
- Section 82.—Writ of injunction may be applied for at any stage of the cause.

Common Law Procedure Act 1860:

- Section 32.—Costs of writ of *Mandamus* and injunction may be included in writs.
- Section 33.—Mode of enforcing writs of injunction against corporations.

ATTACHMENT OF DEBTS.

Common Law Procedure Act 1854:

- Section 60.—Examination of judgment debtor as to debts due to him.
- Section 61.—Judge may order an attachment of debts.
- Section 62.—Order for attachment to bind debts.
- Section 63.—Proceedings to levy amount due from garnishee to judgment debtor.

- Section 64.—Judge may allow judgment creditor to sue garnishee.
 Section 65.—Garnishee discharged.
 Section 66.—Attachment book to be kept by the masters of each court.
 Section 67.—Costs of application.

Common Law Procedure Act 1860:

- Section 28.—Judge may refuse to interfere in proceedings to attach debts.
 Section 29.—Proceedings where third person has a lien on the debt.
 Section 30.—Judge may bar claim of third person, and make orders.
 Section 31.—Provisions of Common Law Procedure Act 1854 to apply to orders.

Scire facias ON JUDGMENT OF ASSETS *in futuro*.

Common Law Procedure Act 1854:

- Section 91.—Proceedings against executors upon a judgment of assets *in futuro* may be had and taken in the manner provided by the Common Law Procedure Act 1852, as to writs of revivor.

SPECIFIC DELIVERY OF CHATTELS.

Common Law Procedure Act 1854:

- Section 78.—The court or judge may order execution to issue for return of chattel detained.

ACTIONS ON LOST INSTRUMENTS.

Common Law Procedure Act 1854:

- Section 87.—In action on negotiable instrument, judge may order loss of instrument not to be set up if indemnity given.

FALSE EVIDENCE.

Common Law Procedure Act 1854:

- Section 21.—Persons making a false affirmation to be subject to the same punishment as for perjury.
 Section 89.—False evidence.

ASCERTAINING THE LAW OF FOREIGN COUNTRIES.

Act to afford facilities for better ascertaining the law of foreign countries, when pleaded in courts within Her Majesty's dominions, 24 Vict., cap. 11:

- Section 1.—Superior courts within Her Majesty's dominions may remit a case with queries to a court of any foreign state with which Her Majesty may have made a convention for that purpose, for ascertainment of the law of such state.
 Section 2.—Court in which action depends to apply such opinion to the facts set forth in cases, &c.

CHAPTER XXII.

COSTS:

1. SECURITY FOR COSTS.

2. COSTS IN GENERAL.

1. SECURITY FOR COSTS.

THE Mayor's Court will grant an order for security for costs in cases similar to those in which an order will be granted by the courts at Westminster; but when granted on account of the plaintiff residing out of the jurisdiction of the court, the jurisdiction must be taken as England, and not the local boundary of the city. Application is made upon notice in the usual way.

The amount of the security differs according to the nature of the case.

The security may be given either by payment of an amount of money into court, by the undertaking of the plaintiff's attorney, or by one or two bondsmen.

If the security is by bond, the name of the person or persons proposed as sureties must be given to the opposite party, and if no objection is made within two days after the day of the notice, the bond is entered into by the proposed sureties; if, however, notice of objection is given within the two days, then the sufficiency of the security is determined by the Registrar, upon an appointment given by him.

The application must in ordinary cases be made before issue is joined in the action.

An affidavit may be made by housekeepers paying rates and taxes as to their responsibility to the amount of security ordered.

In Ejectment, see Common Law Procedure Act 1854, § 93.

2. COSTS IN GENERAL.

By the general County Court Acts a plaintiff is not compelled absolutely to sue a defendant in a county court in actions of Twenty pounds and under; but if he do not do so, then, except under certain circumstances, he is deprived of his costs. See 9 and 10 Vict., cap. 95, §§ 128, 129; 13 and 14 Vict., c. 61, §§ 11, 12, 13; and 15 and 16 Vict., c. 54, § 4.

Similar provisions also exist as to London, under the London (City) Small Debts Extension Act 1852, §§ 119, 120: therefore as a plaintiff is deprived of his costs only if he sues in the superior courts of record, if he sues in the Mayor's Court he may still recover them. But by the County Court Amendment Act 1867, if a plaintiff recovers on verdict a sum less than 10*l.*, he cannot recover a greater amount of costs than he would have been allowed if the suit had been brought in a County Court, unless the Judge certify that the suit was a fit one to be brought in the Mayor's Court.—And see pp. 3 and 4. By the Mayor's Court Procedure Act 1857, § 11, if in any action in covenant, debt, detinue, or assumpsit, not being an action for breach of promise of marriage, the plaintiff shall recover a sum not exceeding five pounds; or if in any action in trespass, trove, or case, not being an action for malicious prosecution, or for libel, or for slander, or for criminal conversation, or for seduction, the plaintiff shall recover a sum not exceeding forty shillings, the plaintiff shall have judgment to recover such sum only and no costs, unless the judge before whom such verdict shall be obtained shall certify on the back of the record

that it appeared to him that there was a sufficient reason for bringing the said action in the court, and in such case the plaintiff shall have judgment to recover his costs of suit; or if, when there is no verdict, the plaintiff shall make it appear to the satisfaction of the court on summons that there was a sufficient reason for bringing the said action in the court, in such case the court may by rule or order direct that the plaintiff shall recover his costs, and thereupon the plaintiff shall have judgment to recover his costs accordingly.

See Form No. XLIII. Application for costs under this section.

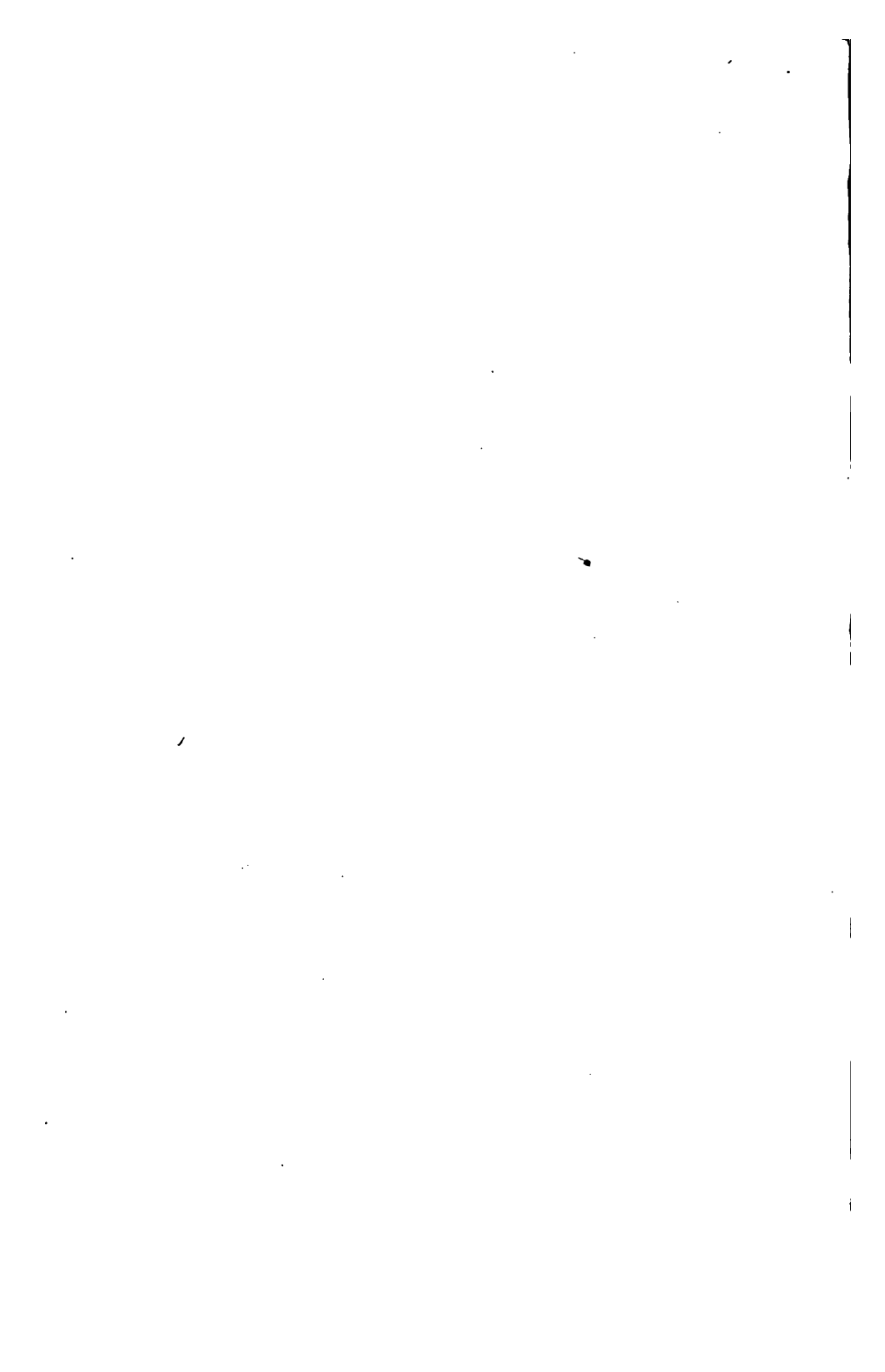
And see Common Law Procedure Act 1860, § 34, where judge may deprive a plaintiff of costs in actions of tort under five pounds.

Costs in the court below upon removal of a cause are costs in the cause (a).

And see costs in case of agreement of parties in actions, Common Law Procedure Act 1852, §§ 43 to 48.—Of abortive issues, *ib.* § 145.—New trial, Common Law Procedure Act 1854, § 44.—Examination of witnesses, *ib.* 57.—Attachment of debts, *ib.* 67.—Payment into court, see Plea of payment into court, *ante* p. 15—Costs on issuing writ in superior court on judgment in Mayor's Court, Mayor's Court Procedure Act, § 48.

(a) *Franks v. Wicks*, 9 Dowl. 489; *Perrin v. West*, 5 N. and M. 291; 3 A. and E. 405; 1 H. and W. 401.

FORMS OF PROCEDURE.



FORMS OF PROCEDURE.

I.

Præcipe, Action.

In the Mayor's Court, London.

— day of _____ 18—.
Defendant (a), at the
Plaintiff (a).
suit of
In an action (b) to recover the sum of — pounds [or, in an Action
of ejection.] G.H.
Plaintiff's Attorney,
of _____

II.

Copy Action and Notice.

In the Mayor's Court, London.

— day of _____ 18—.
Defendant, at the
Plaintiff.
suit of
In an action, &c. [as in Form No. I.] G.H.
Plaintiff's Attorney,
of _____

Take notice that the above action has been commenced against you, and unless you appear thereto within eight days from the service hereof, judgment will be issued against you by default.

The plaintiff claims the sum of — for [here state particulars of the claim] and — for costs; and if the same be paid to me within eight days from the service hereof, all further proceedings will be stayed.

Yours, &c.

To _____ G.H.
the abovenamed Defendant Plaintiff's Attorney,
of _____

III.

Affidavit for Order for Service of Plaint out of Jurisdiction of the Court (c).

In the Mayor's Court, London.

Between Plaintiff.
Defendant.
I _____ of _____, &c., make oath and say, that the cause of action herein arose within the jurisdiction of this court [instead of this statement the deponent may, if preferred, set out the facts of

(a) The capacity in which the parties sue or are sued must be stated, but no residence need be given.

(b) No form or cause of action need be stated.

(c) See Chapter XX. as to Affidavits, &c., in general.

the case, showing circumstances sufficient to give the court jurisdiction], and that the defendant resides and carries on business at ———, &c., out of the jurisdiction of this court; and I further say, that I believe that the defendant has not any place of business within the city of London, and that I am not aware of any place within the same where the said defendant may be served with the process of this Court (a)

Sworn at the Mayor's Court Office, London, this — day
of ——— 18—, before me ———

[*If the Affidavit be sworn by a Foreigner, the following will be the form of Jurat*]:

Sworn at the Mayor's Court Office, London, the—day of—18—, by the deponent [A. B.], the contents of the above affidavit having been first read over and explained to him in the [French] language, by [name of interpreter] of [address and occupation of interpreter], who was first sworn duly to interpret the same: before me, &c.

[*If the Affidavit be sworn by a person unable to write his name, or otherwise appears to be illiterate, the Jurat will be as follows*]:

Sworn at the Mayor's Court Office, London, the — day of ——— 18—, before me. And I do hereby certify that the above affidavit was first read over in my presence to the above named A. B., and that he seemed perfectly to understand the same, and made his mark thereto in my presence.

Affidavit verifying Affidavit made before a Magistrate in any County in England, or in Scotland or Ireland.

In the Mayor's Court, London.

I ——— of ——— &c., make oath and say, that I know and am well acquainted with the handwriting of ———, and that the said ——— is one of Her Majesty's Justices of the Peace in and for the town of ——— in the county of ——— in England [*or one of the Judges of the Supreme Court of Scotland, or one of Her Majesty's Justices of the Peace in and for the town of ——— in that part of the United Kingdom of Great Britain and Ireland called Scotland or Ireland*], and duly authorized to administer oaths, and that the name or signature, and addition "———" set or subscribed to the affidavit of ——— hereunto annexed, is of the proper handwriting of the said ———, as this deponent verily believes.

Sworn, &c. [See Form of Jurat, supra.]

IV.

Affidavit for Order for Substituted Service of Plaintiff, where Plaintiff left with Wife, Servant, or Clerk of Defendant.

In the Mayor's Court, London.

Between

Plaintiff.

Defendant.

I, ——— of ———, &c., make oath and say, that having called at the residence [*or place of business*] of the abovenamed defendant, situate ——— for the purpose of serving him with a true

(a) See Chapter III., as to not allowing costs beyond the costs of the ordinary plaintiff, unless the residence, &c. of defendant is out of the city.

copy of an action entered against him in this honourable court at the suit of the abovenamed plaintiff, sealed with the seal of this court, at the foot whereof was a note addressed to the said defendant in the form directed by this court, [and also with a true copy of an order made herein for leave to serve the plaint out of the jurisdiction of this court]*; and having been unable to serve the said defendant personally therewith, I again called at the said residence [or place of business] of the said defendant, on the — day of —, and then saw the wife [servant or clerk] of the said defendant, with whom I left the said sealed copy action [and copy order] in an envelope directed to the said defendant, and at the same time requested her [or him] to deliver the same to the said defendant.

That on the — day of —, I again called at the said residence [or place of business] of the said defendant, and then and there saw the said wife [or servant, or clerk] of the said defendant, who in answer to my inquiry informed me that she [or he] had given the said envelope and its contents to the said defendant.

Sworn, &c. [See Form of Jurat, ante, p. 62.]

The like where Plaint placed in the Letter-box, or left with the Housekeeper at Defendant's Office, &c.

In the Mayor's Court, London.

Between

Plaintiff.

Defendant.

I — of —, &c., make oath and say, that having called at the office [counting-house or chambers] of the abovenamed defendant, situate, &c. [as in the preceding form, to the asterisk], and having been unable to serve the said defendant personally therewith, I again called at the said office [or counting-house, &c.] of the said defendant, on the — day of —, but the defendant was then absent, and his said office closed. I thereupon left in the letter-box, affixed to the door of the said defendant's office, the said sealed copy action [and copy order], enclosed in an envelope addressed to the said defendant. That I again called at the said defendant's office [or counting-house, &c.] on the — day of —, and found the defendant again absent and his said office closed; and I then inquired of the housekeeper in charge of the house wherein the said defendant's office is situate, whether the said defendant had been in attendance at his said office since the leaving of the process as aforesaid, and she replied that he had, and that she believed the said defendant had received the letters left for him; or

That having been unable to serve the said defendant personally therewith, I called again at the said defendant's office [or counting-house, &c.], and finding the said defendant absent, and his said office closed, I left with the housekeeper, in charge of the house where the said defendant's office is situate, the said sealed copy action [and copy order], in an envelope directed to the said defendant, and requested her to give the same to the defendant; and I afterwards, on the — day of —, saw the said housekeeper, who stated that she had delivered the said envelope and its contents to the said defendant, on the — day of —, [or state such other circumstances, from which it may be inferred that the defendant evades service of the process, or that it has reached his knowledge].

Sworn, &c. [See Form of Jurat, ante, p. 62.]

V.

Præcipe, Appearance.

In the Mayor's Court, London.

Plaintiff.
Defendant (a).

Action entered — day of ———, 18—.

Appearance of defendant — day of ——— 18—.

E. F.
Defendant's Attorney,
of ———

VI.

Notice of Appearance.

— day of ——— 18—.

In the Mayor's Court, London.

——— against ——— (b),

Sir,—Take notice that I have entered an appearance for the
defendant herein. Yours, &c. E. F.To ———
Plaintiff's Attorney.Defendant's Attorney,
of ———

VII.

Demand of Declaration.

In the Mayor's Court, London.

Between

Plaintiff.
Defendant.The defendant demands a declaration herein, or judgment. Dated
this — day of ——— 18—.

By yours, &c.

To Mr. C. D.
Plaintiff's Attorney.E. F.
Defendant's Attorney
of ———

VIII.

DECLARATION.

*Ordinary Form of commencement and conclusion of Declaration,
where the Count Sur concessit solvere is not used (c).*

In the Mayor's Court London.

The — day of ——— A.D. — (d).

A. B. by ——— his attorney [or in person, as the case may be] sues C. D. for [here state the cause of action. If several considerations be stated, continue as follows]: and for, &c. [or if a second or subsequent count be added, commence it thus]: and the plaintiff also sues the defendant for [or, and for a second or third, or as the case may be,] count, the plaintiff sues the defendant for [here state in like manner the other cause or causes of action, and conclude as follows]: and the plaintiff claims — pounds [or if the action is brought to recover specific goods, conclude thus]: and the plaintiff

(a) If defendant has been sued in a wrong name, he should appear by his correct name "sued as," &c., See Chap. IV.

(b) The notice of appearance should show how the appearance is entered where the defendant has been sued in a wrong name and he appears in his correct one.

(c) The declaration should correspond with the entry of the action in all particulars.

(d) The day of entry of the action.

claims a return of the said goods or their value, and — pounds for their detention. [*If the declaration contains a count for the recovery of specific goods, and also a count or counts for other causes of action, the conclusion may be as follows*]: and the plaintiff claims under the — count a return of the goods therein mentioned and — pounds for their detention, and under the residue of the declaration — pounds.

By an Executor.

A. B., executor of the last will and testament of — deceased, by — his attorney [*or in person*], sues C. D. for [*here state the cause of action, and conclude as follows*]: and the plaintiff as executor as aforesaid claims — pounds.

By an Administrator.

A. B., administrator of the personal estate and effects, which were of — deceased, who died intestate, by — his attorney [*or in person*], sues C. D. for [*here state the cause of action, and conclude thus*]: and the plaintiff, as administrator as aforesaid, claims — pounds.

Against an Executor.

A. B. by — his attorney [*or in person*], sues — executor of the last will and testament of C. D., deceased, for [*here state the cause of action, and conclude as usual*].

Against an Administrator.

This will be similar to the preceding Form, describing the defendant as "administrator of all and singular the personal estate and effects which were of — deceased, who died intestate."

By the Public Officer of a Banking Company or copartnership, under 7 Geo. IV., c. 46, s. 4.

A. B., one of the registered public officers of a banking company called the [*insert the proper style*], who is duly appointed and entitled by virtue of the statutes in that behalf to sue in this action as nominal plaintiff for the said company, by — his attorney, sues C. D. for [*here state the cause of action, alleging the debt or cause of action to have accrued to the company, not the plaintiff, and conclude thus*]: and the plaintiff, as such public officer as aforesaid, for and on behalf of the said company, claims — pounds.

Against the Public Officer of a like Company or copartnership.

A. B. by — his attorney [*or in person*] sues C. D., one of the registered public officers of a banking company called the [*insert the proper style*], who is duly appointed and liable by virtue of the statutes in that behalf to be sued as nominal defendant for the said company for [*here state the cause of action, alleging the same to have accrued against the company, not the defendant, and conclude as usual*].

By Husband and Wife.

A. B. and C. [*the Christian name of the wife*] his wife, by — their attorney [*or in person*] sue F. G. for [*here state the cause of action, and conclude as follows*]: and the plaintiffs claim — pounds. [*If the declaration contain a count by a husband and wife for injury done to the wife, and also a count by the husband, in his own right, conclude thus*]: And the plaintiffs claim under the — count, — pounds, and the plaintiff A. B. under the — count — pounds.

Against Husband and Wife.

A. B. by — his attorney [*or in person*] sues E. F. and G. [*Christian name of the wife*] his wife, for [*here state the cause of action, and conclude as usual*].

By an Infant.

A. B. by C. D. who is admitted by the court here, as the next friend of the said A. B. to prosecute for him, the said A. B. being an infant within the age of twenty-one years, sues E. F. for [here state the cause of action, and conclude as usual.]

Against an Infant.

The commencement and conclusion are both in the ordinary form.

Against two defendants, after a plea in abatement of the non-joinder of one of them.

See section 60 of the Common Law Procedure Act 1852.

Commencement of Declaration after Removal of Cause by Certiorari from Mayor's Court.

In the [—————]

The — day of ————— A.D. — (Venue), Whereas a certain plaint was levied in the court of our Lady the Queen, holden before the Mayor and Aldermen of the city of London on the — day of ————— A.D. —, against C. D., at the suit of A. B. in an action of [debt]: And whereas by a writ of *Certiorari* duly issued on the — day of ————— last out of Her Majesty's court of ————— at Westminster, and directed to the said Mayor and Aldermen of the said city, the plaint aforesaid with all things touching the same, together with that writ and the return thereto, were sent into the said court of —————, and therefore the said A.B. by ————— his attorney declares against the said C. D. for [here state the cause of action, and conclude]: and the plaintiff claims ————— pounds.

Count Sur concessit solvere.

In the Mayor's Court, London.

— (a) day of ————— 18—. A. B. by ————— his attorney, demands against C. D. ————— pounds (b) of lawful money of Great Britain, which he owes to and unjustly detains from the said plaintiff; for that whereas the said defendant on the — (c) day of —————, in the — year of the reign of Her present Majesty Queen Victoria, at the parish of St. Helen, London [and within the jurisdiction of this court (d)], for and in consideration of divers sums of money before that time due and owing from the said defendant to the said plaintiff, at the parish aforesaid and within the jurisdiction aforesaid, and then being in arrear and unpaid, granted and agreed to pay to the said plaintiff the said sum of ————— pounds above demanded, where and when he the said defendant should be thereunto afterwards required: yet notwithstanding the said defendant, although often thereto requested, hath not yet paid to the said plaintiff the said sum of ————— pounds above demanded, or any part thereof, to the damage of the said plaintiff Twenty shillings; and therefore he brings his suit, &c.

(a) The day of entry of the action.

(b) The amount mentioned in the action as entered.

(c) A nominal day, any day before action entered.

(d) The words within the brackets are not to be found in the form of this count as anciently used, but have been added within these few years. See 1 Wms. Saunders, 68, Mayor's Court Records.

*Statements of Causes of Action.**On Contracts.*

See the several Forms of counts on Contracts for Goods; work and materials; money lent; money paid; money received; account stated; for an estate sold; for goodwill; for the use of a house and land; for hire of goods, &c.; for freight; for demurrage; payee against maker of note; indorsee against indorser of note; drawer against acceptor of bill; payee against drawer; breach of promise of marriage; warranty of a horse; for not loading pursuant to charter-party; upon a lease for rent; upon a covenant to repair, given in Schedule (B.) of the Common Law Procedure Act 1852.

The words "for money payable by the defendant to the plaintiff," should precede money counts, but need only be inserted in the first.

For Goods sold and delivered.

For goods sold and delivered by the plaintiff to the defendant.

For Interest.

For interest upon money due from the defendant to the plaintiff, and forborne at interest by the plaintiff to the defendant, at his request.

For Wharfage and Warehouse-room.

For the wharfage and warehouse-room of goods deposited, stowed, and kept by the plaintiff, in and upon a wharf, warehouse, and premises of the plaintiff, for the defendant, at his request.

For the Carriage of Goods.

For the conveyance of goods by the plaintiff for the defendant, at his request.

For Lighterage of Goods.

For lighterage of goods conveyed by the plaintiff in lighters and other vessels, and landed out of the same, at the defendant's request.

For Wages.

For the work and services of the plaintiff by him done and rendered, as the hired servant of and for the defendant, and otherwise for the defendant, and at his request, and for wages due from the defendant to the plaintiff in respect thereof.

For Medical Attendance, Medicines, &c.

For the work, care, and attendances of the plaintiff, by him done and bestowed as a surgeon and apothecary, and otherwise for the defendant and at his request; and for medicines and other materials and necessary things, provided and supplied by the plaintiff for the defendant, and at his request.

For Work done as an Attorney.

For the work, journeys, and attendances of the plaintiff, by him done, performed, and bestowed as the attorney and solicitor of and for the defendant, and otherwise for the defendant at his request; and for fees payable by the defendant to the plaintiff in respect thereof; and for materials and necessary things by the plaintiff provided, in and about the said work, for the defendant at his request.

For Work done as an Auctioneer and Appraiser.

For the work, journeys, and attendance of the plaintiff, by him done, performed, and bestowed as an auctioneer and appraiser, and otherwise for the defendant at his request; and for materials and necessary things by the plaintiff provided, in and about the said work, for the defendant at his request.

On a Judgment.

That the plaintiff on the — day of — A. D. — in the court of [—], by the judgment of the said court, recovered against the defendant — pounds, together with — pounds for his costs of suit, which said judgment is still in force and unsatisfied.

Drawer against Acceptor on a Bill payable to a third party.

That the plaintiff on the — day of — A.D. — by his bill of exchange now overdue, directed to the defendant, required the defendant to pay to — or order — pounds — months after date, and the plaintiff delivered the said bill to the said —, and the defendant accepted the said bill, but did not pay the same; whereupon the same was returned to the plaintiff.

Payee against Acceptor.

That — on the — day of — A.D. — by his bill of exchange now overdue directed to the defendant, required the defendant to pay to the plaintiff — pounds — months after date, and the defendant accepted the said bill, but did not pay the same.

Indorsee against Acceptor.

That — on the — day of — A.D. — by his bill of exchange now overdue, directed to the defendant, required the defendant to pay to the said — or order — pounds — months after date, and the defendant accepted the said bill, and the said — indorsed the same to the plaintiff, but the defendant did not pay the same.

Payee against Drawer for Default Payment.

That the defendant, on the — day of — A.D. — by his bill of exchange now overdue, directed to — required the said — to pay to the plaintiff — pounds — months after date, and the said bill was duly presented for payment, and was dishonoured; whereof the defendant had due notice, but did not pay the same.

Indorsee against Drawer, for Default Payment.

That the defendant, on the — day of — A.D. — by his bill of exchange now overdue, directed to — required the said — to pay to the defendant or order — pounds — months after date, and the defendant indorsed the same to the plaintiff, and the said bill was duly presented for payment, and was dishonoured; whereof the defendant had due notice, but did not pay the same.

Indorsee against Indorser for Default Payment.

That — on the — day of — A.D. — by his bill of exchange now overdue, directed to — required the said — to pay to the said — or order — pounds — months after date; and the said — indorsed the said bill to the defendant, who indorsed the same to the plaintiff, and the said bill was duly presented for payment, and was dishonoured; whereof the defendant had due notice, but did not pay the same.

Payee against Drawer of Banker's Cheque.

That the defendant, on the — day of — A.D. — by his cheque or order for the payment of money directed to Messrs. — and Co., Bankers, required them to pay to the plaintiff or bearer — pounds, and delivered the said cheque to the plaintiff, and the same was duly presented for payment, and was dishonoured; whereof the defendant had due notice, but did not pay the same.

Bearer or Indorsee of Cheque against Drawer.

That the defendant, on the — day of — A.D. — by his cheque or order for the payment of money directed to Messrs. — and Co., Bankers, required them to pay to — or bearer [or order] — pounds, and the plaintiff became the bearer of the said cheque [or, and the said — indorsed the said cheque to the plaintiff], and the same was duly presented for payment, and was dishonoured; whereof the defendant had due notice, but did not pay the same.

Payee against maker of a Promissory Note payable on demand.

That the defendant, on the — day of — A.D. — by his promissory note promised to pay to the plaintiff on demand — pounds, but did not pay the same.

Payee against maker of a Promissory Note payable after Notice.

That the defendant, on the — day of — A.D. — by his promissory note promised to pay to the plaintiff — pounds — months after notice, and notice was afterwards given by the plaintiff to the defendant to pay the same — months after the said notice, and the said time for payment had elapsed before action, but the defendant did not pay the same.

By Husband and Wife upon Causes of action accrued to the Wife before Marriage.

Money payable by the defendants to the plaintiffs for goods sold and delivered [or as the case may be] by the said — [Christian name of the wife] whilst she was unmarried, to the defendant.

Against Husband and Wife upon Causes of Action accrued before Marriage.

Money payable by the defendants, to the plaintiff for goods sold and delivered [or as the case may be] by the plaintiff to the said — whilst she was unmarried.

For other and special counts, see Chitty's Forms, and Bullen and Leake's Precedents of Pleadings.

For Wrongs independent of Contract.

See Forms of counts under this head, given in Schedule B. of the Common Law Procedure Act 1852, and for other special forms of counts in tort, see Chitty's Forms, and Bullen and Leake's Precedents of Pleadings.

IX.

Demand of Plea.

In the Mayor's Court, London.

Between

Plaintiff.
Defendant.

The Plaintiff demands a Plea herein, or Judgment.

Dated this — day of — 18 —.

By yours, &c.

E. F.

To Mr. —
Defendant's Attorney.

Plaintiff's Attorney,
of —

X.

PLEAS.

Commencement of Plea (a).

In the Mayor's Court, London.

The — day of ——— A.D. 18— (b).

B. { 1. The defendant, by ——— his attorney [or in person],
 ats { says [here state the substance of the Plea]; if a second plea
 A. { be pleaded, say: 2. And for a second plea the defendant
 says [here state the substance of the plea]: no formal con-
 clusion is necessary (c).

E. F. (d),
 Defendant's Attorney,
 [or Defendant in person,]
 of ———

To one of several Counts.

1. The defendant, by ——— his attorney [or in person], as to the first [or second, as the case may be] count of the declaration, says [here state the substance of the plea, limiting it to the count pleaded to].
- 2 And for a second plea the defendant, as to the first [or second, or as the case may be] count of the declaration, says [here state the substance of the plea, limiting it to the count pleaded to].

To part of an Indebitatus count (specifying the amount pleaded to), and Plea to the residue.

1. The defendant, by ——— his attorney [or in person], as to ——— pounds, parcel of the money claimed, says [here state the substance of the plea, limiting it to the part which may be referred to throughout the body of the plea as the claim of the plaintiff herein pleaded to].
2. And for a second plea the defendant, as to the residue of the money claimed, says [here state the substance of the plea, limiting it to the part as above]. If it is required to plead separately to other parts of the claim, plead the second or other plea as to ——— pounds, other parcel of the money claimed, and plead a third or other plea as to the residue of the money claimed.

To part of an Indebitatus count (excepting the amount not pleaded to), and Plea to the part excepted.

1. The defendant, by ——— his attorney [or in person], except as to ——— pounds, parcel of the money claimed, says [here state the substance of the plea, limiting it to the part which may be referred to as the claim of the plaintiff herein pleaded to].
2. And for a second plea the defendant, as to the said ——— pounds, parcel of the money claimed, says [here state the substance of the plea, limiting it to the part as above].

By an Infant Defendant, who defends by Guardian.

The defendant, by ———, who is admitted by the court here as the guardian of the defendant to defend for him, he being an infant within the age of twenty-one years, says [here state the substance of the plea].

(a) See Common Law Procedure Act 1852, § 67.

(b) *Ib.* § 64.

(c) *Ib.* § 67.

(d) All Pleas in the Mayor's Court must be signed, *vide* p. 13.

By Husband and Wife.

F. and wife } The defendants, by —— their attorney [or in person] say
 ats B. } [here state the substance of the plea].

By an Executor or Administrator.

F., executor, } The defendant, by —— his attorney [or in person], says
 f.c., ats B. } [here state the substance of the plea].

*Substance of Pleas.**Never indebted.*

That he [or they] never was [or were] indebted as alleged.

See note to Form No. 36 in Schedule B. to the Common Law Procedure Act 1852, to what declarations it is applicable, As to the operation of this plea, where the plaintiff has declared upon the Concessit solvere, see p. 15 and Rule of court, Appendix No. 3.

Non Assumpsit.

That he did not promise as alleged.

This form is given in Schedule B. to the Common Law Procedure Act 1852, with a note stating to what declarations on simple contracts it is applicable.

For the forms of pleas, denial of deed; statute of limitations; payment; set-off; release; not guilty; leave and license; self defence; right of way; right of common, see Schedule B. Common Law Procedure Act 1852.

Payment into Court.

See the Form given in Section 71 of the Common Law Procedure Act 1852.

Payment into Court to part of an Idebitatus count, with the general issue, and other Pleas to the residue.

1. The defendant, by —— his attorney [or in person], except as to —— pounds, parcel of the money claimed, says that he never was indebted as alleged.
2. And for a second plea the defendant, except as to the said —— pounds, parcel of the money claimed, says [here state the substance of the plea, limiting it to the part pleaded to, which may be referred to as the claim of the plaintiff herein pleaded to.]
3. And for a third plea [or fourth, as the case may be] plea the defendant, as to the said —— pounds, brings into court the sum of —— pounds, and says that the said sum is enough to satisfy the claim of the plaintiff in respect of the matter herein pleaded to.

Tender.

That he always was and still is ready and willing to pay to the plaintiff the said —— pounds, and before action [or if the debt was payable on a day certain, on the said —— day of ——, A.D. ——] he tendered and offered to pay the same to the plaintiff, and the plaintiff refused to accept it, and the defendant now brings the said —— pounds into court ready to be paid to the plaintiff.

If the plea is pleaded to part only of the declaration it must be limited accordingly; any other pleas must then be limited to the residue of the claims in the same manner as where money is paid into court as to part.

Traverse of the drawing of a Bill of Exchange.

That he did not draw the said bill as alleged.

Traverse of the making of a Promissory Note.

That he did not make the said note as alleged.

Traverse of the Acceptance.

That he did not accept the said bill as alleged.

Traverse of the Indorsement.

That he did not indorse the said bill as alleged.

Traverse of the Presentment for Acceptance.

That the said bill was not duly presented for acceptance as alleged.

Traverse of the Presentment for Payment.

That the said bill was not duly presented for payment as alleged.

Traverse of the Default in Acceptance.

That the said ——— accepted the said bill when the same was presented for acceptance as alleged [or that the said bill was not dishonoured as alleged.]

Traverse that Bill was returned to the Plaintiff.

That the said bill was not returned to the plaintiff as alleged.

Traverse of Notice of Dishonour.

That he had not due notice of the dishonour of the said bill as alleged.

Accommodation Bill.

That he accepted the said bill for the accommodation of the plaintiff, and there never was any value or consideration for the acceptance or payment of the said bill by the defendant.

The like Indorsed to Plaintiff without value.

That he accepted the said bill for the accommodation of the said ———, and there never was any value or consideration for the acceptance or payment of the said bill by the defendant, and the same was indorsed to the plaintiff, and he always held the same without any value or consideration.

Accord and Satisfaction.

That he delivered to the plaintiff, and the plaintiff accepted and received from the defendant certain goods [or as the case may be] in satisfaction and discharge of the plaintiff's claim.

Nul tiel Record.

That there is not any record of the alleged judgment remaining in the said court here [or in the said court of _____].

Infancy of Defendant.

That at the time of making the alleged promise [or agreement, or of the acceptance of the said bill, or to an *Indebitatus count*, of contracting the alleged debt] he was an infant within the age of twenty-one years.

Traverse that Defendant [or Plaintiff] is Executor or Administrator.

That he [or the plaintiff] never was, nor is he, executor [or administrator] as alleged.

Never indebted by an Executor or Administrator.

That he [or if the count claims money payable by the testator in his lifetime, the said _____ never was indebted as alleged. If the declaration claims money payable by both, say That neither he nor the said _____ ever was indebted as alleged.

Plea in abatement of the Non-joinder of a Co-contractor as Defendant.

The defendant, by _____ his attorney [or in person], prays judgment of the bill original herein, and that the same may be quashed, because he says that the alleged promise, if any, was made [or debt, if any, was contracted] by the defendant jointly with _____, who is still living, and who at the commencement of this suit was and still is resident within the jurisdiction of this court, and not by the defendant alone, and this the defendant is ready to verify; wherefore he prays judgment of the said bill original, and that the same may be quashed, &c.

This plea must be signed in the same manner as ordinary pleas (see p. 13), and must be accompanied by an affidavit of its truth. See next form.

Affidavit of the truth of a Plea in abatement.

In the Mayor's Court, London.

Between

Plaintiff.

Defendant.

I _____ of _____, the abovenamed defendant in this cause, make oath and say, that the plea hereunto annexed is true in substance and fact. [If the plea is one of non-joinder of a co-defendant, add, and that _____ in the said plea named resides at _____.]

Sworn, &c. [See form of Jurat, ante, p. 62.]

Plea to the Jurisdiction where the amount claimed in the action exceeds Fifty pounds (a).

— day of ——— A.D. ———.

And the defendant in his own proper person (b) comes and says that this court ought not to have or take further cognizance of this action, because he says that the said supposed causes of action, and each and every of them, accrued to the plaintiff out of the jurisdiction of this court and not in the parish of St. Helen, London, or elsewhere within the jurisdiction of this court*, and this the defendant is ready to verify; wherefore he prays judgment, whether this court can or will take further cognizance of this action.

C. D.

Defendant in person,
of ———

The like, where the amount claimed in the action does not exceed Fifty pounds (c).

Same as preceding form, to the asterisk, and then continue as follows:

And that the defendant did not dwell nor did he carry on business within the city of London, or the liberties thereof at the time when this action was brought, nor did he dwell nor did he carry on his business there at any time within six calendar months next before the time when this action was brought, nor did the cause of this action either wholly or in part arise within the said city or the liberties thereof, and this the defendant is ready to verify; wherefore, &c. [conclude as in preceding form (d)].

Affidavit verifying the truth of a Plea to the Jurisdiction.

In the Mayor's Court, London.

Between

Plaintiff.

Defendant.

I ——— of ——— &c., the abovenamed defendant in this cause, make oath any say, that the plea hereunto annexed is true in substance and fact.

Sworn, &c. [See form of Jurat, ante, p. 62.]

Cassetur Billa.

and hereupon on the — day of ——— the plaintiff, inasmuch as he cannot deny the matters above pleaded, prays judgment, and that the above Bill original of the plaintiff may be quashed to the intent that the plaintiff may sue out a better Bill against him. Therefore it is considered that the said Bill original be quashed, &c.

For other forms of special pleas, see Chitty's Forms, and Bullen and Leake's Precedents of Pleadings.

(a) This plea must be pleaded alone, it cannot be pleaded with any other plea, and must be supported by an affidavit of the truth of its contents. Vide form of Affidavit, supra.

(b) Pleas to the jurisdiction must be pleaded in person and not by attorney.

(c) See Mayor's Court Procedure Act, § 12.

(d) See notes (a) and (b) to preceding form.

Replications and subsequent Pleadings.

See the forms of Joinder of issue; Replication to pleas containing new matter; to plea of Release; to plea of Set-off; to Self-defence; to Right of way, in Schedule B. of the Common Law Procedure Act 1852; and for forms of special Replications, see Chitty's Forms, and Bullen and Leake's Precedents of Pleadings.

New Assignment.

See the form given in Schedule B. of the Common Law Procedure Act 1852; and See Chitty's Forms, and Bullen and Leake's Precedents of Pleadings.

Demurrer.

See the form of Demurrer and Joinder in demurrer in Section 89 of the Common Law Procedure Act 1852; and see also Bullen and Leake's Precedents of Pleadings.

XI.

Commission for Examination of Witnesses out of the Jurisdiction.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To _____ [name of commissioners] greeting: Know ye that we in confidence of your prudence and fidelity have appointed you, and by these presents do give unto you, any two or more of you, full power and authority diligently to examine the witnesses upon certain interrogatories to be exhibited to them as well on the part of _____ plaintiff as on the part of _____ defendant in an action now depending between them in our court holden before the Mayor and Aldermen of the city of London, in the Chamber of the Guildhall of the same city; and therefore we command you, any two or more of you, that on or before the — day of — now next ensuing, at a certain day and place, [or certain days and places] to be appointed by you for that purpose, you cause the said witnesses to come before you at _____, and then and there examine each of them apart upon the said interrogatories on their respective corporal oath, first taken before any two or more of you, according to the form of their several religions, and that you do take such their examinations and reduce them into writing on paper or parchment, and when you shall have so taken them, you are to send the same without delay to the Registrar of our said court, closed up under your seals or the seals of any two or more of you, distinctly and plainly set, together with the said interrogatories, and this writ to be filed of record in the office of our said court. And we further command you and every of you, that before you act in or be present at the swearing or examining of any witness or witnesses, you take an oath according to the form of your several religions, that you will according to the best of your skill and knowledge truly and faithfully, and without partiality to any or either of the parties, take the examination and deposition of all and every witness and witnesses produced and examined by virtue of this writ, upon the interrogatories produced and left with you; and we give you, any two or more of you, full power and authority, jointly or severally to administer such oath to the rest or

any other of you. And we further command that all and every the clerk or clerks employed in taking, writing, transcribing, or engrossing the deposition or depositions of witnesses to be examined by virtue hereof, shall, before he or they be permitted to act as clerk or clerks as aforesaid, severally take an oath truly and faithfully, and without partiality to any or either of the parties in the cause, to take and write down, transcribe, and engross the deposition of all and every witness and witnesses produced before and examined by you the said commissioners or any of you, as far forth as he or they are directed or employed by you the said commissioners, or any of you, to take down, write, or engross the said depositions, which oath any two or more of you are hereby empowered to administer to such clerk or clerks, according to his or their several religions. And we further command you, that previous to the execution of this commission which is granted by our said court at the instance of the said plaintiff [*or* defendant], and by him prosecuted, the said _____ commissioners who have been named, approved, and appointed on behalf of the said plaintiff [*or* defendant], shall give or cause to be given two days' notice in writing of such execution of this commission under their respective hands to the said _____ respectively commissioners who have been named, approved of, and appointed on behalf of the said defendant [*or* plaintiff], by delivering such notice to the said _____ personally, or by leaving the same for them or him at their or his then respective place or places of abode, and in and by such notice shall state the place, day, and hour whereat and wherein this commission shall be executed. [*If the opposite party refuse to name commissioners or join in the commission, the latter clause should be omitted.*] Witness _____ Recorder of the said city, the _____ day of _____ in the _____ year of our reign.

[Name of Registrar.]

And see the form of Commission given in Chitty's Forms, 9th edition.

XII.

Notice to inspect and admit documents.

In the Mayor's Court, London.

Between

Plaintiff.

Defendant.

Take notice, that the plaintiff [*or* defendant] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or* plaintiff] or his attorney, at _____ on _____ between the hours of — and —; and the defendant [*or* plaintiff] is hereby required, within forty-eight hours from the last mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause. Dated the — day of _____ 18—.

To G. H., Attorney for
Defendant [*or* Plaintiff].

E. F., Attorney for
Plaintiff [*or* Defendant].

[Here describe the documents, the manner of doing which may be as follows]:

ORIGINALS.

Description of the Documents.	Date.
Indenture of Lease from A. B. to C. D.	1st Feb., 1848
Letter, Defendant to Plaintiff	1st Mar., 1848
Bill of Exchange for 100 <i>l.</i> at Three Months, drawn by A. B. on and accepted by C. D., indorsed by E. F. and G. H.	1st May, 1840

COPIES.

Description of the Documents.	Date.	Original or duplicate served, sent, or delivered, when, how, and by whom.
Letter, Plaintiff to Defendant	1st Feb. 1848	Sent by General Post, 2nd Feb. 1848.
Notice to produce papers	1st Mar. 1848	Served 2nd March, 1848, on defendant's attorney, by E. F. of —

Notice to produce Documents.

In the Mayor's Court, London.

Between

Plaintiff.
Defendant.

Take notice, that you are hereby required to produce to the court and jury on the trial of this cause [*here describe the document or instrument required to be produced*], and all other documents, letters, books, papers, and writings whatsoever containing any entry, memorandum, or minute or other matter in anywise relating to the matters in question in this cause. Dated this — day of — 18—.

Yours, &c. E. F.

Plaintiff's [*or* Defendant's] Attorney,

To _____

the abovenamed Plaintiff [*or* Defendant],
and to Mr. _____ his Attorney.

of _____

Affidavit of Service of same.

In the Mayor's Court, London.

Between

Plaintiff.
Defendant.

I, H. K. of _____, clerk to _____ the attorney in this cause for the abovenamed plaintiff [*or* defendant], make oath and say, that I did on the — day of — personally serve the abovenamed plaintiff [*or* defendant, *or* E. F., the attorney for the abovenamed plaintiff *or* defendant] in this cause with a notice to produce, a true copy whereof is hereunto annexed marked A. [*or if not personally served, say* serve the abovenamed, &c., by delivering the same to, and leaving it with a clerk (*or* servant) of the said _____ at his office or place of business (*or* house) situate _____].

Sworn, &c. [See Form of Jurat, ante, p. 62.]

XIII.

Subpœna ad testificandum.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To——— greeting: We command you and each of you, that you be and appear in our court to be holden before the Mayor and Aldermen of the city of London, in the Chamber of the Guildhall of the same city, on —— the — day of —— at —— of the clock in the forenoon, and so on from day to day until the cause hereinafter mentioned shall be tried, to testify the truth according to your knowledge, in a certain cause depending in the same court and then and there to be tried between —— plaintiff and —— defendant, on the part of plaintiff [*or* defendant]. And this you are not to omit, on forfeiture of One hundred pounds. Witness —— Recorder of the said city, the — day of —— in the —— year of our reign (a).

E. F.

[Name of Registrar.]

Attorney for the Plaintiff [*or* Defendant].*Subpœna duces tecum.*

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To——— greeting: We command you and each of you, that you be and appear in our court to be holden before the Mayor and Aldermen of the city of London, in the Chamber of the Guildhall of the same city, on —— the — day of —— at —— of the clock in the forenoon, and so on from day to day until the cause hereinafter mentioned shall be tried, to testify the truth according to your knowledge, in a certain cause depending in the same court and then and there to be tried, between —— plaintiff and —— defendant, on the part of the plaintiff [*or* defendant], and also that you bring with you and produce at the time and place aforesaid [*here describe the documents required to be produced by the witness*]. And this you are not to omit, on forfeiture of One hundred pounds. Witness —— Recorder of the said city, the — day of —— in the — year of our reign (a).

E. F.

[Name of Registrar.]

Attorney for the Plaintiff [*or* Defendant],
of ——*Subpœna to compel the Attendance of a Witness residing out of the Jurisdiction (b).*

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, To——— greeting: Whereas it has been represented to our court holden before the Mayor and Aldermen of the city of London, in the Chamber of the Guildhall of the same city, that you are a material and necessary witness in a certain cause there depending between —— plaintiff and —— defendant, and that you reside without the jurisdiction of our said court; and whereas by an order of our said court, dated the

(a) All subpœnas in the Mayor's Court are tested on the day on which they are issued.

(b) Mayor's Court Procedure Act, § 80.

— day of — it is ordered, that a subpoena do issue to compel your attendance on the trial of the said cause; We therefore command you that you be and appear in our said court, to be holden before the Mayor and Aldermen of the city of London, in the Chamber of the Guildhall of the same city, on — the — day of — at — of the clock in the forenoon, and so on from day to day until the said cause mentioned shall be tried, to testify the truth according to your knowledge, in the said cause depending in the same court and then and there to be tried. [*If the Subpœna be for the production of documents, add, and that you bring with you and produce at the time and place aforesaid (here describe the documents required to be produced by the witness)*] on the part of the plaintiff [*or defendant*]. And this you are not to omit, on forfeiture of One hundred pounds. Witness — Recorder of the said city, the — day of — in the — year of our reign (c).

E. F.

[Name of Registrar.]

Attorney for the Plaintiff [*or Defendant*].

XIV

Entry of Cause for Trial.

In the Mayor's Court, London.

Between

Plaintiff.

Defendant.

Action entered — day of — 18 —.

Notice of trial [*or inquiry of damages, or demurrer for argument, or special case for argument*] for — day of — 18 —.[*If cause entered for trial by defendant, add here the words "per proviso."*]

Debt, £

E. F., Plaintiff's Attorney.

G. H., Defendant's Attorney.

XV.

Notice of Trial.

In the Mayor's Court, London.

Between

Plaintiff.

Defendant.

Take notice of trial [*or inquiry of damages, &c.*] in this cause [*if cause entered for trial by the defendant, add the words "per proviso"*] for the sitting of this court to be holden at the Guildhall, London, on the — day of —. Dated this — day of — 18 —.

Yours, &c.

E. F.

To Mr. —

Defendant's [*or Plaintiff's*]
Attorney.Plaintiff's [*or Defendant's*] Attorney,
of —

(c) See note (a), p. 78.

XVI.

Venire facias.

Therefore let a jury be summoned according to the custom, &c., and at the same court a precept is directed to ——— one of the serjeants-at-mace of The said court, that he according to the custom, &c., summon to the said court to be holden on the — day of ———, twenty-four, &c., by whom, &c., and who neither, &c., to recognize, &c., because as well, &c., and the same day is given to the plaintiff and defendant aforesaid to be there, &c.

Postea, and Judgment on a Verdict for Plaintiff.

Afterwards, that is to say, on the — day of ——— in the — year of the reign of our Sovereign Lady Queen Victoria, the jurors of the jury aforesaid being solemnly elected, tried, and sworn upon the said jury, according to the custom of the said city, to declare the truth of and concerning the premises, and to try the issue joined between the said parties in the plea aforesaid, for their verdict upon their oath, say,

In an Action for Debt.

That the defendant was indebted to the plaintiff in — pounds as within alleged [or that the defendant was indebted to the plaintiff in — pounds, parcel of the debt within alleged, and that he never was indebted in more than that sum as within alleged], and they assess the damages of the plaintiff on occasion of the detention of the within debt over and above his costs of suit to one shilling, and for those costs to one shilling. Therefore it is considered by the court that the plaintiff do recover against the defendant the said debt of — pounds, and the monies by the jurors aforesaid in form aforesaid assessed, and also — pounds for his costs of suit by the court here adjudged of increase to the plaintiff, which said debt, damages, and costs, in the whole, amount to — pounds.

In an Action for Damages.

That the defendant did promise as within alleged [or as the case may be, stating the affirmative of the issue as found for the Plaintiff], and they assess the damages of the plaintiff on occasion of the premises within complained of by him over and above his costs of suit to — pounds, and for those costs to one shilling. Therefore it is considered by the court that the plaintiff do recover against the defendant the said monies by the jurors aforesaid in form aforesaid assessed, and also — pounds for his costs of suit, by the court here adjudged of increase to the plaintiff, which said monies and costs, in the whole, amount to — pounds.

Postea, and Judgment on a Non-suit.

Afterwards, &c. [as in the preceding form, to the words "and to try the issue joined between the said parties in the plea aforesaid," and then proceed as follows]: and were ready to give their verdict in that behalf, but the plaintiff being solemnly called came not, nor did he further prosecute his said suit against the defendant. Therefore it is considered by the court that the plaintiff take nothing by his bill original aforesaid, and that the defendant do go acquitted thereof without a day, &c., and that the defendant do recover against the plaintiff — pounds for his costs of defence.

Postea, and Judgment on a Verdict for Defendant.

The form of this Postea will be similar to a Postea on a verdict for plaintiff, except that the finding of the jury will be in a negative of the issue, and the judgment will be the same as on a nonsuit.

Postea, and Judgment on a Verdict, where Defendant pleads to the jurisdiction of the Court.

Afterwards, &c. [as in the preceding form, to the words "for their verdict upon their oath say," and then continue as follows]:

For Plaintiff.

That the cause of this action did [or did in part] arise within the said city and within the jurisdiction of this court [or as the case may be, stating the affirmative of the issue]; and because the said defendant hath not pleaded to or otherwise answered the bill original aforesaid. Therefore, &c. [conclude as on a judgment by default.]

For Defendant.

That the cause of this action did not arise within the said city and within the jurisdiction of this court [or as the case may be, stating the negative of the issue]. Therefore it is considered by the court that the plaintiff take nothing by his bill original aforesaid; and that the defendant go acquitted thereof without a day, &c.

For other forms of Postea, and Judgment on Verdict, see Chitty's Forms, 9th edition.

XVII.

Judgment Docquet.

In the Mayor's Court, London.

Between

Plaintiff.

Defendant.

Action entered — day of ——— 18—.

Judgment for want of appearance [or for want of plea, or on withdrawal of plea, or on verdict, or on nonsuit, or for want of prosecution, or default under rule.]

Debt, £

Costs, £

— day of ——— 18—,

E. F.

Plaintiff's Attorney.

of ———

XVIII.

EXECUTION.

Fi. Fa. on Judgment for Plaintiff.

To ——— Serjeant-at-Mace, &c., or to any } By the Mayor, &c.
other Serjeant-at-Mace &c.

Levy on the goods and chattels of C. D. within the liberties of the city of London, — pounds [the amount of all the monies recovered by the judgment], which A. B. lately in the Queen's Majesty's Court holden before us the said mayor and aldermen in the Chamber of the Guildhall of the said city recovered against him, whereof the said C. D. is convicted as appears to us the said mayor and aldermen of record, together with interest upon the said sum at the rate of Four

pounds *per centum per annum*, from the — day of — in the year of our Lord One thousand Eight hundred and sixty —, on which day the judgment aforesaid was entered up. And have you the said monies, with such interest as aforesaid, here in court without delay, to be rendered to the said A. B. and have there this precept. Dated at the Guildhall, London, this — day of — in the year of our Lord One thousand Eight hundred and sixty — [*the day on which the judgment was signed*].

E. F.

[Name of Registrar].

Attorney for the Plaintiff,
of —

Indorsement to be made thereon.

Levy — pounds and interest thereon at Four pounds *per centum per annum*, from the — day of — 18—, and — for this writ besides, &c.

The defendant is a —, and resides at —

Fi. Fa. on Judgment for Defendant.

To — Serjeant-at-mace, &c., or to any } By the Mayor, &c.
any other serjeant-at-mace, &c.

Levy on the goods and chattels of A. B., within the liberties of the city of London, — pounds, which lately in the Queen's Majesty's Court holden before us the said mayor and aldermen in the Chamber of the Guildhall of the said city were awarded to C. D. for his costs of defence in an action lately prosecuted in the said court by the said A. B. against the said C. D., whereof the said A. B. is convicted, as appears to us the said mayor and aldermen of record, together with interest on the said sum at the rate of Four pounds *per centum per annum*, from the — day of — in the year of our Lord One thousand Eight hundred and sixty —, on which day the judgment aforesaid was entered up. And have you the said monies, with such interest as aforesaid, here in court without delay, to render to the said C. D., and have there this precept. Dated at the Guildhall, London, this — day of — in the year of our Lord One thousand Eight hundred and sixty — [*the day on which the judgment was signed*].

G. H.

[Name of Registrar.]

Attorney for the Defendant,
of —

Indorsement.

Levy — pounds, &c., [*as on a Fi. Fa. on Judgment for Plaintiff*].

The Plaintiff is a —, and resides at —

XIX.

Judgment in Default of Appearance in an Action of Debt.

Because the said defendant hath not appeared hereto, Therefore it is considered by the Court that the said plaintiff recover against the said defendant his debt aforesaid, and also the sum of — pounds for his costs of suit.

The like in an Action for Damages, with award of Inquiry.

Because the said defendant hath not appeared hereto, Therefore let a jury be summoned to inquire what damages the plaintiff hath sustained, as well on occasion of the premises as for his costs of suit in this behalf; and at the same court, &c. [*See Venire facias, and Postea, Form No. XVI.*]

Judgment in Default of Appearance against one of several Defendants in Debt.

Because the said defendant C. D. hath not appeared hereto, wherefore the said plaintiff ought to recover against the said defendant C. D. his debt aforesaid; but because it is unknown to the court here whether the defendant E. F. will be convicted of the premises or not; and because it is convenient and necessary that there be but one taxation of damages in this suit; therefore let the giving of judgment in this behalf against the said defendant C. D. be stayed, until it is known whether or not the said E. F. will be so convicted; Therefore let a jury be summoned, &c. [*See Venire facias, and Postea, Form No. XVI. If the action be for damages, this form should be varied accordingly.*]

And see the various forms of Judgment by Default given in Chitty's Forms, 9th edition.

XX.

Affidavit of Service of Plaint within the Jurisdiction.

In the Mayor's Court, London.

Between

Plaintiff.

Defendant.

I _____ of _____ (attorney's clerk), make oath and say, that I did, on the — day of _____ within the jurisdiction of this court, that is to say within the city of London, or within two hundred yards of the border thereof, personally serve the abovenamed defendant with a true copy of an action entered against him in this honourable court, sealed with the seal of the said court, at the suit of the abovenamed plaintiff; and I further say, that at the foot thereof there was a note addressed to the said defendant, in the form directed by this honourable court.

Sworn, &c. [*See form of Jurat, ante, p. 62.*]

Affidavit of Service of Plaint and Order beyond the Jurisdiction.

In the Mayor's Court, London.

Between

Plaintiff.

Defendant.

I _____ of _____ (attorney's clerk), make oath and say, that I did on the — day of _____ personally serve the abovenamed defendant with a true copy of an action entered against him in this honourable court, sealed with the seal of the said court, at the suit of the abovenamed plaintiff; and I further say, that at the foot thereof there was a note addressed to the said defendant, in the form

directed by this honourable court. And I further say, that I did at the same time serve on the said defendant a true copy of the order made herein for leave to serve the plaint out of the jurisdiction of the court [*or* a true copy of the order hereunto annexed].

Sworn, &c. [*See form of Jurat, ante, p. 62.*]

Affidavit of Service of Order for substituted Service of Plaint.

In the Mayor's Court, London.

Between

Plaintiff.

Defendant.

I _____ of _____ (attorney's clerk), make oath and say, that I did on the — day of _____ leave at the residence [*or* place of business] of the abovenamed defendant, situate _____ a true copy of an action entered against him in this honourable court, sealed with the seal of the said court, at the suit of the abovenamed plaintiff; and I further say, that at the foot thereof there was a note addressed to the said defendant, in the form directed by this honourable court. And I further say, that I did at the same time and place leave for the said defendant a true copy of the order hereunto annexed, marked A., [and a true copy of the order made herein for leave to serve the plaint out of the jurisdiction of the court, *or* a true copy of the order hereunto annexed, marked B.]

Sworn, &c. [*See form of Jurat, ante, p. 62.*]

XXI.

Judgment for want of Plea.

Because the defendant hath not pleaded hereto: Therefore, &c. [*conclude as on a Judgment in Default of Appearance. See Form No. XIX.*]

Judgment on Withdrawal of Plea.

Because the said defendant hath withdrawn his plea pleaded herein: Therefore, &c. [*conclude as on a Judgment in default of Appearance. See Form No. XIX.*]

XXII.

Record—Judgment for want of Prosecution.

In the Mayor's Court, London.

Whereas an action was entered in this court against _____ at the suit of _____ on the — day of _____ 18 — in a plea of debt (*or as the case may be*): And whereas the said _____ appeared thereto: And whereas the said _____ hath not prosecuted his suit with effect; that is to say, he hath not delivered his copy bill [*or* not replied to the plea of defendant, *or in case of other pleading, specify it; or* not joined issue, *as the case may be*], in pursuance of the demand of the defendant for that purpose made: Therefore it is considered by the Court that the plaintiff take nothing by his bill original aforesaid, and that the defendant go acquitted thereof without a day, &c., and that the said defendant recover against the said plaintiff — pounds for his costs of defence.

XXIII.

Withdrawal of Action where no Appearance entered to Plaintiff.

In the Mayor's Court, London.

Between

Plaintiff.

Defendant.

Action entered — day of ——— 18 —.

I hereby withdraw the above action. Dated this — day of ———
18 —.

E. F.

Plaintiff's Attorney,
of ———

XXIV.

Præcipe for Rule to discontinue after Appearance to Plaintiff.

In the Mayor's Court, London.

Between

Plaintiff,

Defendant.

Action entered — day of ——— 18—.

Application for rule to discontinue after appearance of defendant [*or as the case may be*].

Dated this — day of ——— 18—.

E. F.

Plaintiff's Attorney,
of ———

XXV.

Consent to Rule to Stay.

In the Mayor's Court, London.

————— *versus* —————

We consent to a rule of court, that all further proceedings herein be stayed, the defendant undertaking to pay the sum of ——— pounds the debt, and ——— pounds the costs in this action, in manner following; that is to say [*here state how the debt and costs are to be paid*], on all usual terms.

[*The usual terms are, "if default be made in the payment of the said sums of ——— pounds and ——— pounds in manner hereinbefore mentioned, then that the plaintiff, or his executors or administrators in case of his death, be at liberty to sign final judgment of the then or any succeeding court day, and issue execution for the whole of the said sums of ——— pounds and ——— pounds, or such part thereof as shall then remain unpaid, together with the costs of "judgment, execution, officers' fees, and all other incidental expense."*]

Witness, &c. (a)

E. F. Plaintiff's Attorney.

G. H. Defendant's Attorney.

——— day of ——— 18 — .

(a) If the consent be signed by the defendant in person, his signature should be attested.

XXVI.

Judgment in default of Payment under Rule to Stay.

Because the said defendant hath failed to comply with the terms of the order of this court, made herein on the — day of ——— A. D. 18—: Therefore it is considered by the Court that the aforesaid plaintiff recover against the said defendant the sum of — pounds [parcel of the sum above demanded] for his debt, and also — pounds [*the amount of costs remaining unpaid under the rule and the costs of judgment*] adjudged by the said court to the plaintiff for his costs of suit.

XXVII.

Writ of Certiorari for Removal of Cause before Judgment.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the mayor and aldermen of the City of London greeting: We, being willing for certain causes, to be certified of a plaint levied in our court before you against C. D., at the suit of A. B., in an action on promises [*or as the plea is*] command you that you send to us, [*or, in the Common Pleas, to our justices; or, in the Exchequer of Pleas, to the barons of our Exchequer*] at Westminster, immediately after the receipt of this writ, the plaint aforesaid, with all things touching the same, as fully and entirely as it remains in our court before you, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done. Witness [*name of Chief Justice, or in the Exchequer the name of Chief Baron*] at Westminster, the — day of ——— in the year of our Lord 18—

XXVIII.

Notice of Defendant's intention to remove Cause, under the Mayor's Court Procedure Act, § 16.

In the Mayor's Court, London.

Between

Plaintiff.

Defendant.

I hereby give you notice that it is my intention, on the part of the abovenamed defendant, to remove this cause by *Certiorari* into Her Majesty's Court of ——— at Westminster. And further take notice that the said defendant will, with two proposed sureties, attend at the office of this court, situate at Guildhall in the city of London, on the — day of ——— at — o'clock — noon, to enter into the required recognizances for removal of causes in pursuance of the Mayor's Court of London Procedure Act 1857, and that the said proposed sureties will at the same time and place justify themselves as good and sufficient sureties in that behalf. And further take notice that the names and descriptions of such proposed sureties are ——— of ——— [merchant], and ——— of ——— [merchant].

Dated this — day of ——— 18—.

Yours, &c.

G. H.

To E. F.

Plaintiff's Attorney.

Defendant's Attorney,
of ———

XXIX.

Writ of Procedendo.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the mayor and aldermen of the city of London, greeting: Although we being willing for certain causes to be certified of a plaint levied in our court before you, against C. D. at the suit of A. B., in an action of debt [*or as the plea is*] lately by our writ commanded you that you should send to us at Westminster [*or, in the Common Pleas*, to our justices at Westminster; *or, in the Exchequer of Pleas*, to the barons of our Exchequer at Westminster] immediately after the receipt of that writ the plaint aforesaid, with all things touching the same, as fully and entirely as it remained in our court before you, by whatsoever names the parties may be called therein, together with that writ, that we might further cause to be done thereupon what of right we should see fit to be done; yet we, being now moved by certain causes in our court before us [*or, in the Exchequer of Pleas*, before the barons of our said Exchequer; *or, in the Common Pleas thus*, yet for certain causes in this behalf specially moving our justices of the bench aforesaid, we] command you and every of you, that in the plaint aforesaid you proceed with what speed you can, in such manner according to the law and custom of England as you shall see proper, our said writ to you thereupon before directed to the contrary thereof in anywise notwithstanding. Witness [*name of Chief Justice or Chief Baron*] at Westminster, the — day of ——— in the year of our Lord 18 —.

XXX.

Affidavit to obtain Execution in Queen's Bench, &c. on Judgment in Mayor's Court.

In the Mayor's Court, London.

I ——— of ——— &c. make oath and say, that judgment was duly signed in the court of the Mayor and Aldermen of the city of London, on the — day of ——— in a certain action, wherein ——— was plaintiff, and ——— was defendant, for the sum of ——— debt, and ——— costs.

And I further say, that the parchment writing marked A, exhibited to me at the time of making this affidavit, is the record of the said action, and the judgment of the said court of Mayor and Aldermen therein, and the said judgment remains unreversed and unsatisfied, as I verily believe.

And I further say, that the signature ——— is the signature of the proper officer of the said court of Mayor and Aldermen.

Sworn, &c. [*See form of Jurat, ante, p. 62.*]

The like on Order.

In the Mayor's Court, London.

I ——— of ——— &c. make oath and say, that an order was duly made in the court of the Mayor and Aldermen of the city of London, on the — day of ——— in a certain action, wherein ——— was plaintiff, and ——— was defendant, whereby it was ordered that [*here state the terms of the order*].

And I further say, that the paper writing marked A, exhibited to me at the time of making this affidavit, is the order of the said court of Mayor and Aldermen, and the said order remains unreversed and unsatisfied, as I verily believe.

And I further say, that the signature _____ is the signature of the proper officer of the said court of Mayor and Aldermen.

Sworn, &c. [*See form of Jurat, ante, p. 62.*]

XXXI.

Præcipe on same.

In the Mayor's Court, London.

Plaintiff

Defendant

Action entered — day of _____ 18 —.

Judgment by default [*or as the case may be*].

Debt in Plaintiff, £

Actual amount for which judgment signed [*or order made*], £

Costs, £

Costs of Removal, £

Judgment signed [*or order dated*] — day of _____ 18—.

Execution issued — day of _____ 18—.

E. F.

Plaintiff's Attorney.

of _____

XXXII.

Application for Judgment Summons.

In the Mayor's Court, London.

*Here insert
Plaintiff's
and Defen-
dant's names
in full.*

Plaintiff.

Defendant.

*Here insert
Address of
Defendant.*

of

*If an Order
and not
Judgment,
insert
"Order," in
lieu of
"Judgment."*

Judgment — day of _____

Debt, £

Costs of Judgment, £

Subsequent costs, £

*If the case
has been
heard before,
insert the
day of the
last hearing.*

First summons — day of _____

Last hearing — day of _____

Application for summons of debtor, respecting his not having paid the above debt and costs.

Dated this — day of _____ 187—

*May be
signed by
Plaintiff, or
his Attorney.*

_____ of _____

XXXIII.

Judgment Summons.

In the Mayor's Court, London.

You are hereby required to appear before the court, at the Guildhall of the said city, on _____ the — day of _____ at _____ of the clock in the — noon of the same day, precisely, touching the not having paid to his debt and costs as under :

- Debt, £
- Costs of Judgment, £
- Subsequent costs, £

Dated this — day of _____ in the year of our Lord One thousand Eight hundred and seventy—

By the Court.

To _____ of _____ }
in the county of _____ }

Affidavit of Service of Judgment Summons.

In the Mayor's Court London.

Between

Plaintiff.

Defendant.

I _____ of _____ (attorney's clerk), make oath and say, that I did, on _____ the — day of _____ personally serve the above-named defendant with an original summons, issuing out of and under the seal of this honourable court, a true copy of which is hereunto annexed, by delivering such original summons to the said defendant.

Sworn, &c. [See form of Jurat, ante, p. 62.]

XXXIV.

Order to pay under Judgment Summons.

In the Mayor's Court, London.

At a court holden the — day of _____, 18—.

Whereas _____ is indebted to _____ in the sum of _____ pounds _____ shillings and _____ pence by virtue of a _____ of _____ on the — day of _____, 18—. And whereas the said _____ hath been duly summoned to appear touching his not having paid such debt:

Now it is ordered, that the said _____ do pay to the said _____ the said debt, together with the sum of £ — for costs as follows, viz.

By the Court.

XXXV.

Committal.

In the Mayor's Court, London.

At a Court holden on the — day of _____, 18 —, before _____ Judge of the said court.

Whereas _____ is indebted to _____ in the sum of £ _____ by virtue of a _____ of _____.

And whereas the said _____ was summoned to appear in this court on the — day of _____ and an order was made at the said

court that the said ——— should pay the said debt, together with the sum of £ ——— for costs, in manner following; that is to say ———.

And whereas the said ——— has made default, in paying according to the tenor of the said Order:

And whereas it has been proved to the satisfaction of the said ——— Judge that the said ——— has the means of paying the sum of £ ———, in respect of which he has made default.

Therefore it is ordered by the said court, holden as aforesaid, that the said ——— shall be committed to the Debtors' Prison of the City of London for the term of ——— days, or until payment of the said sum of £ ——— for having neglected or refused to pay the said sum of £ ———, he having the means to pay the same.

By the Court.

To ——— one of the Serjeants-at-Mace of the said court, his Deputy, and to the Keeper of the Debtors' Prison of the City of London. }

XXXVI.

Witness Summons.

In the Mayor's Court, London.

Plaintiff,
Defendant.

Mr.

Take notice, that you are hereby required to appear in this court, at the Guildhall of the said City, on the — day of ——— at ——— o'clock in the ——— noon, to give evidence touching the means of the Defendant herein; and that you do at the same time and place produce

Dated this — day of ———, 18 —.

By the Court.

XXXVII.

Draft Consent to Reference, &c.

To be obtained in the office, gratis.

[It will be seen in the following form that clauses are inserted which are inconsistent with each other; parties therefore agreeing to refer must strike out such as they do not agree to, or are not applicable to the state of the cause.]

In the Mayor's Court, London.

— day of ——— 18—.

We consent to an Order,

That all matters in difference in this cause [and all matters in difference between the parties] be referred to ——— [or That a verdict be entered in this cause for the plaintiff, for the sum of ——— pounds ——— shillings ——— pence, subject to the order and determination of ———, to whom all matters in difference in this cause (and all matters in difference between the parties) are hereby referred; and who is hereby empowered to direct that a verdict shall be entered

for the plaintiff or for the defendant, or that a nonsuit be entered, as he shall think proper]; to order and determine what he shall think fit to be done by and between the parties respecting the said matters hereby to him referred; and who shall have all the powers of a judge at the trial of a cause, and of an arbitrator; and who shall also have power to call for the production by either party of all papers, letters, documents, and writings relating to the matters in question in this cause; and who shall also have power, if he shall think necessary, to state the facts of the case, or any questions of law arising thereon in the form of a special case for the opinion of this court, or of one of the superior courts at Westminster.

That the said parties and the respective witnesses to be produced upon the said reference shall be examined before the said _____ upon oath.

That the said _____ may find generally for either party, and not upon any specific issue unless required to do so.

That the said _____ shall certify to this court in writing his order and determination respecting the said matters hereby to him referred.

That the costs of this action shall be according to the rules and practice of this court in such cases [or shall abide the event of the said certificate], and that the costs of the said reference and certificate shall be in the discretion of the said _____ to direct and certify as he shall think proper.

That the said reference shall be attended by the said parties or their attorneys, without counsel.

That the certificate to be made and given by the said _____ shall be made and given, ready to be delivered to the parties, or to either of them; or, if either of them should be dead before the making of the said certificate, to their respective personal representatives requiring the same on or before the — day of _____ or on or before such further or ulterior day as the said _____ shall appoint and signify in writing under his hand.

That the Registrar of this court shall have power [to alter or reduce the said verdict, and] to enter up judgment either for the plaintiff or for the defendant, according to the tenor and effect of the certificate to be given by the said _____.

And further, that this court, if it shall think fit, shall make any order or orders upon the plaintiff or defendant, either for the payment of money or otherwise, according to the tenor and effect of the certificate to be given by the said _____.

That in the event of the said certificate being disputed in any manner, this court upon application shall have power to remit the matters referred, or any of them, for reconsideration and determination of the said _____, and as often and upon such terms as this court shall think fit; and that in the event of the said _____ refusing to act, or dying before making his certificate, this court may on application appoint a new arbitrator.

Judgment under the Rule and Certificate.

And afterwards on the — day of _____. It was ordered by the court (*inter alia*) that all matters in difference in this cause should be referred to A. B., to order and determine what he should think fit to be done by and between the parties respecting the matters thereby to him referred, and that he the said A. B., should certify to the

court his order and determination respecting the said matters thereby to him referred, and that judgment should be entered up either for the plaintiff or defendant according to the tenor and effect of the certificate to be given by the said A. B., and afterwards on the — day of — the said A. B. did certify that the said plaintiff (or defendant) should [*here set out the tenor of the certificate as the case may be*]. Therefore it is considered by the court that the plaintiff recover against the defendant the sum of £ _____ for his costs of suit.

(*If the certificate be in favour of the Defendant or otherwise, vary the form accordingly*).

XXXVIII.

Copy Action and Notice under the Summary Procedure on Bills of Exchange Act 1855.

In the Mayor's Court, London.

— day of — 18—

C.D.

at the suit of A.B.

in an Action to recover the Sum of —

Defendant,
Plaintiff,

E.F.

Plaintiff's Attorney,
of —

The Plaintiff claims £ — Principal and Interest due to him as the payee (or indorsee) of a Bill of Exchange (or promissory note) of which the following is a copy: (*here copy Bill of Exchange or Promissory note, and all indorsements thereon*) and £ — for Costs; and if the amount thereof be paid to the Plaintiff or his Attorney within Eight days from the service hereof, further proceedings will be stayed.

Take notice, that the above action has been commenced against you, and unless within Twelve days after the service hereof, inclusive of the day of such service, you obtain leave from the said Court to appear thereto, and do within such time cause an appearance to be entered thereto, the Plaintiff will be at liberty, at any time after the expiration of such twelve days, to sign final Judgment for any sum not exceeding the sum above claimed, and the sum of £ — or such other sum as shall be allowed by the Court for Costs, and issue Execution for the same.

Leave to appear may be obtained on an application to the said Court, supported by affidavit, showing that there is a defence to the Action on the merits, or that it is reasonable that the Defendant should be allowed to appear in the Action.

N.B.—This Plaint is to be served within six calendar months from the date hereof.

Yours, &c.

E.F.

Plaintiff's Attorney,

of —

To Mr. —

the above-named Defendant.

No. XXXIX.

Judgment thereon in default of appearance.

In the Mayor's Court, London.

— day of — 18 — [*the day of entry of the action.*]

A. B. by E. F. his attorney, demands against C. D. the sum of £ ——. The plaintiff claims £ —, principal and interest due to him as the payee (or indorsee) of a bill of exchange (or promissory note) of which the following is a copy:—(here copy bill of exchange or promissory note and all indorsements thereon, and £ — for costs; and if the amount thereof be paid to the plaintiff or his attorney within eight days from the service hereof, further proceedings will be stayed.

Take notice that the above action has been commenced against you, and unless, within twelve days after the service hereof, inclusive of the day of such service, you obtain leave from the said court to appear thereto, and do within such time cause an appearance to be entered thereto, the plaintiff will be at liberty, at any time after the expiration of such twelve days, to sign final judgment for any sum not exceeding the sum above claimed, and the sum of £ —, or such other sum as shall be allowed by the court for costs, and issue execution for the same.

And the said C. D. hath not appeared. Therefore it is considered that the said A. B. recover against the said C. D. £ —, together with £ — for costs of suit.

XL.

Writ of Ejectment.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To X. Y. Z. and all persons entitled to defend the possession of — [describe the property with reasonable certainty] in the parish of — in the city of London, to the possession whereof A. B. and C., some or one of them, claim to be [or to have been on and since the — day of — A. D. —] entitled, and to eject all other persons therefrom. These are to will and command you or such of you as deny the alleged title, within sixteen days after service hereof, to appear in our court holden before the Mayor and Aldermen of the city of London in the Chamber of Guildhall of the same city, to defend the said property, or such part thereof as you may be advised, in default whereof judgment may be signed, and you turned out of possession. Witness —, Recorder of the said city, the — day of — in the — year of our reign.

[Name of Registrar.]

Indorsement.

This writ was issued by — of — attorney for the said plaintiff.

Writ of Possession in Ejectment upon a Judgment by Default.

To — Serjeant-at-mace, &c., or to any other } By the Mayor, &c.
serjeant-at-mace, &c.

Whereas A. B., lately in the Queen's Majesty's Court holden before us the said mayor and aldermen in the Chamber of the Guildhall of

the city of London, by the judgment of the same court, recovered possession of _____ [*here describe the premises as in the Writ of Ejectment*] with the appurtenances: Therefore we command you that without delay you cause the said A. B. to have possession of the said land and premises with the appurtenances, and in what manner you have executed this precept, make appear to us immediately upon the execution hereof, and have you there then this precept. Dated at the Guildhall, London, this — day of _____ A. D. 18—.

E. F.
Attorney for the Plaintiff,
of _____

[Name of Registrar.]

XLII.

Notice of Application for Order.

In the Mayor's Court, London.
Between

Plaintiff.
Defendant.

Take notice, I shall apply to the court to be holden at the office of the court to-morrow at — o'clock [*some time between the hours of twelve and two*], for an order for [*here state the purport of the application*].

Dated this — day of _____ 18—.

Yours, &c. E. F.

To Mr. _____
Defendant's [*or Plaintiff's*]
Attorney.

Plaintiff's [*or Defendant's*]
Attorney.

XLIII.

Application by Infant to sue or defend by next Friend or Guardian (a).

In the Mayor's Court, London.

Application of A. B. [the infant] of _____ to commence and prosecute an action against C. D., for goods sold and delivered [*or as the case may be; or, in the case of an infant defendant, to appear and defend the abovementioned action (a)*] by E. F., of _____ as the next friend [*or guardian, if for a defendant*] of the said A. B., he being an infant under the age of twenty-one years.

Dated this — day of _____ 18—.

Witness, &c.

[Signature of Infant (b).]

I, E. F. of _____ do hereby consent and agree, that the abovenamed A. B. shall be at liberty to commence and prosecute an action against the abovenamed C. D., by me as his next friend [*or to defend the abovementioned action by me as his guardian*], in pursuance of the above application.

Dated this — day of _____ 18—.

Witness, &c.

[Signature of next Friend or Guardian.]

(a) In case of a defendant, the application should be intitled in the cause.

(b) If the Infant be too young to sign his or her name the application must be signed by the next friend or guardian, as A. B. signed by me for him (or her) being his (or her) Father and next friend (or guardian) E. F.

XLIII.

*Application for Costs, under Section 11 of the Mayor's Court
Procedure Act.*

In the Mayor's Court, London.

Plaintiff.

Defendant.

Take notice, you are hereby required to attend at _____ on _____
the — day of _____ at — o'clock in the — noon, to show cause
why the plaintiff should not be at liberty to recover his costs herein,
and why the plaintiff should not have judgment to recover such costs
accordingly.

Dated this — day of _____

Yours, &c.

E. F.

Plaintiff's Attorney.

To Mr. G. H.

Defendant's Attorney.

TABLE OF COSTS.

PLAINTIFF'S COSTS.

[All items marked thus * are allowed according to circumstances. It is impossible to give the exact costs applicable to each case, especially in those above £20, as the allowance will depend upon the result, but the minimum is here given.]

<i>Action.</i>	Under £10	Out of pocket.	£10 and und. £20.	Out of pocket.	£20 and above.	Out of pocket.
	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>
Letter	3 0	...	3 6	...	3 6	
Instructions for Action	3 0	...	3 4	...	6 8	
Action and paid ...	10 0	4 0	15 6	4 6	17 6	5 0
Copy and service*.	2 6	...	2 6	...	2 6	
	<hr style="width: 50%; margin: 0 auto;"/>		<hr style="width: 50%; margin: 0 auto;"/>		<hr style="width: 50%; margin: 0 auto;"/>	
	18 6		24 10		30 2	

Service of Plaintiff out of the Jurisdiction.

In addition to the ordinary charges.

Affidavit, &c. ....	...	1 0	4 0	1 0	6 0	2 0
Copy order to serve	...	...	1 0	...	1 0	

The above costs are allowed for service within three miles of the General Post Office, but where defendant resides beyond that distance extra costs will be allowed, according to the distance of the residence of the defendant, or for agent's charges.

Under 10*l.* the 1*s.* paid upon the affidavit only will be allowed.

The costs are marked at the time of the grant of the order for service of the plaintiff out of the jurisdiction.

Substituted Service of Plaintiff.

Affidavit	4 0	1 0	6 0	1 0	7 0	1 0
Extra copy action, and paid	1 0	6	1 0	6	1 0	6
Attending for order, including service, and paid .....	...	...	5 0	1 0	7 0	2 0
	<hr style="width: 50%; margin: 0 auto;"/>		<hr style="width: 50%; margin: 0 auto;"/>		<hr style="width: 50%; margin: 0 auto;"/>	
	5 0		12 0		15 0	

Under 10*l.* no allowance will be made for attending for the order.

When there is a verdict under 10*l.* the plaintiff cannot recover a greater amount of costs than he would have been allowed if the action had been brought in a County Court, unless the judge certify. See p. 57.

* 3*s.* 4*d.* extra is allowed for every additional defendant.

Table of Costs.

<i>Costs to Trial.</i>	Under £20. <i>s. d.</i>	Out of pocket. <i>s. d.</i>	£20 and above <i>s. d.</i>	Out of pocket. <i>s. d.</i>
In addition to Costs at p. 96				
*Instructions to proceed	3 4	...	6 8	
*Copy declaration and demand of plea.....	3 0	...	4 0	
Instructions for brief ^a	6 8	...	13 4	
Brief ^a :				
In ordinary cases	20 0			
Drawing, <i>per folio</i>	1 0	...	1 0	
Copy, <i>per folio</i>	4	...	4	
Entering plea on record, join- der of issue, demurrer, &c., and notice	4 0	...	6 0	
If special, above three folios, <i>per folio</i>	4	...	4	
Entering cause for trial and no- tice, and summoning jury...	9 0	4 0	12 0	5 0
*Notice to inspect and admit, and notice to produce each ordinary	4 0	...	5 0	
Attending inspection.....	3 4	...	6 8	
Affidavit of notice to produce, &c.	4 0	1 0	5 0	1 0
Subpœna, <i>vide</i> Writs.				
Searching, if cause in paper ...	3 4	...	3 4	
Fee to counsel, <i>vide</i> Fees to Counsel.				
Attending counsel ^a	3 4	...	6 8	
*Attending court	3 4	...	6 8	
Entering verdict on record, and paid	6 0	3 0	8 0	5 0
Notice of taxing.....	2 0	...	3 0	
*Bill of costs and copy	4 0	...	6 0	
Signing judgment, and paid...	7 0	4 0	12 0	5 0
Attending taxing, and paid ...	4 4	1 0	8 8	2 0
*Letters, &c.	3 4	...	6 8	
Marking cause a remanet.....	3 0	3 0	4 0	4 0
Affidavit of increase and copy ^b	6 0	1 0	6 0	1 0

Judgment in default of Appearance.

	Under £10. <i>s. d.</i>	Out of pocket. <i>s. d.</i>	£10 and und. £20. <i>s. d.</i>	Out of pocket. <i>s. d.</i>	£20 and above. <i>s. d.</i>	Out of pocket. <i>s. d.</i>
Costs as at p. 96	18 6	...	24 10	...	30 2	
Instructions to proceed...	...	...	3 4	...	6 8	
Affidavit of service	5 0	1 0	5 0	1 0	6 0	1 0
Judgment	5 6	2 6	6 6	3 6	11 0	4 0
	29 0		39 8		53 10	

The above costs are marked without taxation, if extra costs have been incurred within the eight days allowed for appearance; as for particulars of demand and the like, the plaintiff must tax his costs upon notice.

^a In special cases, discretionary.

^b An affidavit of increase is not required or allowed unless called for by the opposite party.

Table of Costs.

Judgment for want of a Plea.

	Under £10		Out of pocket.		£10 and under £20.		Out of pocket.		£20 and above.		Out of pocket.	
	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
Costs as at p. 96	18	6	...	...	24	10	...	...	30	2	...	...
*Instructions to proceed .....	...	...	...	...	3	4	...	...	6	8	...	...
*Copy declaration to deliver, and demand of plea	3	0	...	...	3	0	...	...	4	0	...	...
Judgment	6	0	3	0	7	0	4	0	12	0	5	0
Bill of costs	2	0	...	...	3	0	...	...	4	0	...	...
Notice taxing	2	0	...	...	2	0	...	...	3	0	...	...
Attending taxing, and paid	3	4	1	0	4	4	1	0	5	4	2	0
*Letters, &c. ....	...	...	...	...	...	...	...	...	...	...	...	...

Incident to Rule for payment of Debt by Instalments, and Judgment.

	Under £20.		Out of pocket.		£20 and above.		Out of pocket.	
	s.	d.	s.	d.	s.	d.	s.	d.
Attendances upon defendant on terms of settlement, and drawing consent.....	6	8	...	...	13	4	...	...
Drawing up rule and service	4	4	1	0	5	4	2	0
If costs not agreed, add	...	...	...	...	...	...	...	...
Notice of taxing	2	0	...	...	3	0	...	...
Attending taxing, and paid	4	4	1	0	5	4	2	0
When plaintiff is entitled to immediate judgment by his rule, in lieu of the last item, charge	...	...	...	...	...	...	...	...
Attending taxing and signing judgment	8	0	5	0	13	0	6	0
Instructions to proceed to judgment on account of nonpayment of instalments by defendant	2	6	...	...	3	4	...	...
Signing judgment marked without taxation	7	0	4	0	12	0	5	0

Pleadings.

	Under £20.		£20 and above.	
	s.	d.	s.	d.
If the declaration exceeds the allowance of four folios, calculated in the costs of the Plaint, 1s. <i>per</i> folio drawing, engrossing, and copy to deliver.	...	...	...	...
One or more pleas of three folios or under, exclusive of instructions, but inclusive of engrossing.....	4	0	5	0
If above three folios, for every folio 1s.	...	...	...	...
Attending pleader	3	4	3	4
Paid, <i>vide</i> Fees to Counsel.				
No Special Declaration will be allowed in cases in which the <i>Concessit solvere</i> will apply.				

Fees to Counsel.

	Under £20		£20 and above.	
	s.	d.	s.	d.
In ordinary cases, including clerk.....	23	6	44	6
Refresher	13	0	23	6

In special cases extra fees will be allowed, as also more than one counsel, according to the merits of the case.

Refreshers will be allowed where a cause is postponed from one sitting of the Court to another, but not to an adjournment day.

Pleaders' fees will only be allowed in special cases.

Consultations or advice on evidence will only be allowed in special cases,

Table of Costs.

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Paying Money in and out of Court.

	Under £50.	Out of pocket.	Above £50.	Out of pocket.
	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>
Attending	3 4	...	6 8	
Paid, under £5 ...	1 0			
£5 and under 10 ...	1 6			
10 " 20 ...	2 0			
20 " 50 ...	2 6			
50 and upwards	5 0			
Replication, taking money out of Court in satisfaction.....	4 0	...	5 0	
Signing judgment in case of default being made in payment of the costs taxed, marked without taxation	7 0	4 0	12 0	5 0

Witnesses.

	<i>s. d.</i>	<i>s. d.</i>
Labourers or journeymen, police Constables or Inspectors	3 6 to	7 0
Master tradesmen, clerks, &c.	5 0 to	10 6
Professional men, auctioneers, engineers, notaries, gentlemen, esquires, bankers, merchants	10 6 to	21 0

Travelling expenses of witnesses will be allowed according to the sums reasonably and actually paid, but in no case shall exceed 1*s.* per mile one way.

No allowance will in any case be made to plaintiff or defendant, except for travelling expenses.

Writs

	Under £10.	Out of pocket.	£10 and under £20.	Out of pocket.	£20 and above.	Out of pocket.
	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>
Fi. Fa.	5 0	1 0	5 0	1 0	7 0	2 0
Spa. ad test.	5 0	1 0	5 0	1 0	5 0	1 0
Spa. duces tecum	6 0	1 0	6 0	1 0	6 0	1 0
Application and order for Spa. for service out of jurisdiction. }	Same allowance as upon an application for service of plaint out of the jurisdiction.					
Service of Spa. within three miles of the General Post Office	2 6	...	2 6	...	2 6	
If beyond three miles	Same allowance as upon a plaint for service out of the jurisdiction.					

Judgment Summons.

See the Allowance for Costs, p. 43.

The fees out of pocket are 6*d.* for the summons, and 1*s.* for the order of committal; this is exclusive of the Officer's fees if the committal is executed, *post*, p. 101.

Table of Costs.

<i>Miscellaneous.</i>	Under £20.	Out of pocket.	£20 and above.	Out of pocket.
	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>
Paid for certificate and oath to affidavit for removal of judgment .....	...	2 0	...	3 0
Notice of application for order for particulars of demand, set-off, time to deliver pleadings, and the like.....	2 0	...	3 0	
Attendance on each application, including order and service ...	4 4	1 0	4 4	1 0
Drawing particulars of demand or set-off, and copy, if under three folios	4 0	...	5 0	
If above three folios, Drawing, <i>per folio 8d.</i> Copying, <i>per folio 4d.</i>				
Demand of declaration or other pleading	2 0	...	3 0	
Attendances in general matters ^a	3 4	...	3 4	
Copy, notices, &c., to annex to brief or record, each	1 0	...	1 6	
Attending withdrawing record, and paid ^b	4 4	1 0	5 4	2 0
(If record withdrawn on day of trial, the fee out of pocket will be the same as on a verdict).				
Instructions to counsel in common matters	3 4	...	3 4	
Circular letters	2 0	...	3 6	
After the first	1 0	...	1 6	
Affidavits, common.....	4 0	...	6 0	
If special, Drawing, <i>per folio 8d.</i> Copying, <i>per folio 4d.</i>				

DEFENDANT'S COSTS.

	Under £20.	Out of pocket.	£20 and above.	Out of pocket.
	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>
Instructions to appear	3 4	...	6 8	
Appearance and notice	8 0	3 0	9 0	3 0
Instructions for pleas.....	3 4	...	6 8	
Drawing same and copy to deliver, <i>Nunquam indebitatus</i>	4 0	...	5 0	
Attending to deliver	3 4	...	3 4	
Instructions for brief, brief and further costs	} Same allowance as for plaintiff's costs.			

^a No allowance will be made in any case for attending deponent to be sworn to affidavit.

^b No allowance where rule drawn up, or judgment signed on withdrawal of plea, except for the payment out of pocket.

Table of Costs.

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<i>Costs of bringing in Record</i> per proviso.	Under £20.		Out of pocket.		£20 and above.		Out of pocket.	
	<i>s.</i>	<i>d.</i>	<i>s.</i>	<i>d.</i>	<i>s.</i>	<i>d.</i>	<i>s.</i>	<i>d.</i>
Entering cause for trial and notice ...	9	0	4	0	12	0	5	0
Notice to plaintiff's attorney to bring in record	2	0	...		3	0		
Attending searching, if record brought in	3	4	...		3	4		
Plaintiff's attorney not having lodged record, making up same.....	5	0	...		7	6		
If special, above seven folios, <i>per folio</i>		4	...			4		
 <i>On Rule to discontinue.</i>								
Marked without taxation.								
After appearance and before declaration	15	8	...		19	2		
If demand of declaration given, extra	3	0	...		4	0		

FEEs OF SERJEANT-AT-MACE.

<i>Actions.</i>	£	<i>s.</i>	<i>d.</i>
Executions, not exceeding £10.....		7	6
£10 and not exceeding £20, and 6 <i>d.</i> on each £1 above £10.....		7	6
£20 and not exceeding £50, and 3 <i>d.</i> on each £1 above £20.....		12	6
£50 and not exceeding £100, and 3 <i>d.</i> on each £2 above £50.....	1	0	0
Above £100	1	7	6
Warrant upon leaving execution		2	6
Executing writ of possession.....	1	0	0
Commitment warrant (besides mileage)		7	6
 <i>Fees on Verdicts.</i>			
Under £20		4	0
Above £20		6	0



APPENDIX.

CONTENTS TO THE APPENDIX.

No.

1. The Mayor's Court of London Procedure Act 1857.
2. Order of the Queen in Council, 17th November, 1863.
3. General Rule as to plea of *Nunquam indebitatus* to count of *Concessit solvere*.

APPENDIX.

No. 1.

20 & 21 Vict. cap. clvii.

MAYOR'S COURT OF LONDON PROCEDURE ACT.

An Act for abolishing certain Jurisdiction of the Sheriffs' Courts of the City of London, and for amending the Process, Practice, and Mode of Pleading in the Mayor's Court, and for extending the Jurisdiction thereof.

WHEREAS there exist in the city of London certain courts of law, called respectively the Sheriffs' Court of the Poultry Compter, and the Sheriffs' Court of the Giltspur-street Compter, and whereas it is expedient that certain functions and jurisdiction of the said Sheriffs' Courts should be abolished; and whereas it is expedient to make the Mayor's Court more efficient, by extending its powers, and simplifying its practice and mode of procedure: May it therefore please your Majesty that it may be enacted, and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: (that is to say):

I. This Act shall commence and come into operation on the 1st day of October, 1857. Commencement of Act.

II. In citing this Act in other Acts of Parliament and in legal instruments and other proceedings, it shall be sufficient to use the expression "The Mayor's Court of London Procedure Act 1857." Short title.

III. From and after the commencement of this Act no action or suit for the recovery of any debt or demand shall be commenced in the Sheriffs' Court, either of the Poultry Compter or of the Giltspur-street Compter, save only and except pleas of personal actions under the provisions of the London (City) Small Debts Act 1852, which may continue to be brought as heretofore in the Sheriffs' Court, without being entitled as of either compter: Provided always that nothing in this Act contained shall be deemed or construed to take away or diminish the power or authority of the Sheriffs of London or either of them to execute any writ of inquiry or other writ or mandate, which may be directed to them by any court of competent authority, or by any judge or officer thereof, or by any person lawfully authorized to issue the same, or any writ of trial which may be directed to them or either of them under or by virtue of the provisions of the Act of the third and fourth William the Fourth, chapter forty-two, nor to take away or diminish any other power or authority which the sheriffs of London or either of them can have or hath, or can or may lawfully exercise, by Act of Parliament, Charter, Act of Common Council, custom, prescription, or otherwise howsoever. No action or suit to be brought in Sheriffs' Court except in certain cases.

IV. And whereas it is expedient to facilitate the proceedings in error on matters arising in the Mayor's Court, therefore from and after the commencement of this Act no petition shall be presented to or be received by the Lord High Chancellor for any writ of error to review any proceeding in the Mayor's Court, nor shall any writ of error be issued thereout to review any such proceeding, nor shall any writ or other proceeding be issued to the court of Saint-Martin's-le-Grand for any purpose as a court of error to review any proceeding of the Mayor's Court, but in all cases of error arising on proceedings in the Mayor's Court the Exchequer Chamber shall be the court of error for the purposes of this Act, and all matters in error shall be proceeded with according to the rules to be framed for that purpose as is hereinafter expressed. In error from the Mayor's Court, the Exchequer Chamber, and not the Court of St. Martin's-le-Grand, to be the Court in error.

Special case may be stated for opinion of court or of courts of common law. V. The parties in any action or foreign attachment may, after issue joined, by consent, and by the order of the court, state the facts of the case in the form of a special case for the opinion of the court, or of any one of the superior courts, and may agree that judgment shall be entered thereon for the plaintiff, garnishee, or defendant, as the court or such superior court may think fit.

Special cases to be transmitted by the Registrar to Rule department of the Master's office of superior court. VI. When the opinion of such superior court shall be required, the Registrar of the Mayor's Court shall transmit such special case, under the seal of the court, to the Rule department of the Master's office of the superior court in which the case is to be argued, and thereupon all such proceedings shall be taken and rules and regulations observed in the said superior court as are usual with reference to cases stated for the opinion of such superior court in actions therein pending.

Registrar to enter judgment, upon production of office copy rule. VII. The Registrar of the court, upon the production of an office copy of the rule of the superior court made upon hearing the said special case, shall enter judgment in the court in conformity with the decision of the superior court.

Appeal from Mayor's Court to superior courts at Westminster. VIII. If either party appearing on the trial of any cause in which the sum sought to be recovered shall exceed the sum of twenty pounds shall be dissatisfied with the determination or direction of the court in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same to any one of the superior courts, (two or more of the puisne judges or barons thereof shall sit out of term as a court of appeal for that purpose); provided that such party shall, within two days after such determination or direction, give notice of appeal to the other party or his attorney, and also give security within such time or times as the court shall direct, to be approved of by the Registrar of the court (if the Judge shall so direct), for the costs of the appeal, whatever be the event of the appeal, and for the amount of the judgment if he be the defendant and the appeal be dismissed; provided nevertheless, that such security, so far as regards the amount of the judgment, shall not be required in any case where the Judge of the court shall have ordered the party appealing to pay the amount of such judgment into the hands of the Registrar, and the same shall have been paid accordingly; and the said court of appeal may either order a new trial, on such terms as it shall think fit, or may order judgment to be entered for either party (as the case may be), and may make such order with respect to the costs of the said appeal as such court may think proper; and such orders shall be final.

Security to be given, if court so direct.

approved of by the Registrar of the court (if the Judge shall so direct), for the costs of the appeal, whatever be the event of the appeal, and for the amount of the judgment if he be the defendant and the appeal be dismissed; provided nevertheless, that such security, so far as regards the amount of the judgment, shall not be required in any case where the Judge of the court shall have ordered the party appealing to pay the amount of such judgment into the hands of the Registrar, and the same shall have been paid accordingly; and the said court of appeal may either order a new trial, on such terms as it shall think fit, or may order judgment to be entered for either party (as the case may be), and may make such order with respect to the costs of the said appeal as such court may think proper; and such orders shall be final.

Appeal to be in form of case. IX. Such appeal shall be in the form of a case agreed on by both parties or their attorneys; and if they cannot agree, the Judge of the court, upon being applied to by them or their attorneys, shall settle the case and sign it; and such case shall be transmitted by the Registrar to the Rule department of the Master's office of the court in which the appeal is to be brought.

Rules to set aside or enter verdict, &c., may be moved before any of the courts at Westminster, if Mayor's Court shall grant leave.

X. If upon the trial of any issue the Judge shall grant leave to the plaintiff or defendant to move in any of the superior courts to set aside a verdict or a nonsuit, and to enter a verdict for the plaintiff or defendant, or to enter a nonsuit (as the case may be), or for a new trial, the party to whom such leave may have been given may apply by motion to such superior court, within such period of time after the trial as motions of the like kind shall from time to time be permitted to be made in such superior court, for a rule to show cause why such verdict or nonsuit should not be set aside, and a verdict entered for the plaintiff or defendant, or a nonsuit entered, or why a new trial should not be had (as the case may be) in such action; which rule is hereby authorized and empowered to grant or refuse such rule (which rule, when granted, shall operate as a stay of proceedings until the determination thereof), and afterwards to proceed to hear and determine the merits thereof, and to make such orders thereupon, and as to costs, as the same court shall think proper; and in case such court shall order a new trial to be had in any such action, the party obtaining such order shall deliver the same or any office copy thereof to the Registrar of the said court, and thereupon all the

proceedings on the former verdict or nonsuit shall cease, and the action shall proceed to trial, according to the practice of the court, in like manner as if no trial had been had therein; or in case the court before whom such rule shall be heard shall order the same to be discharged, the party obtaining any such order may, upon delivering the same or an office copy thereof to the Registrar, be at liberty to proceed in any such action as if no such rule *Nisi* had been obtained; and if a verdict be ordered to be entered for the plaintiff or defendant, or a nonsuit be ordered to be entered (as the case may be), judgment shall be entered accordingly.

XI. If in any action in covenant, debt, detinue, or assumpsit, not being an action for breach of promise of marriage, the plaintiff shall recover a sum not exceeding five pounds, or if in any action in trespass, trover, or case, not being an action for malicious prosecution, or for libel, or for slander, or for criminal conversation, or for seduction, the plaintiff shall recover a sum not exceeding forty shillings, the plaintiff shall have judgment to recover such sum only, and no costs, unless the judge before whom such verdict shall be obtained shall certify on the back of the record that it appeared to him that there was a sufficient reason for bringing the said action in the court, and in such case the plaintiff shall have judgment to recover his costs of suit; or if when there is no verdict the plaintiff shall make it appear to the satisfaction of the court, on summons, that there was a sufficient reason for bringing the said action in the court, in such case the court may by rule or order direct that the plaintiff shall recover his costs, and thereupon the plaintiff shall have judgment to recover his costs accordingly.

Plaintiff recovering not exceeding 5*l.* in action of contract, and 40*s.* in action for a wrong, to have no costs, unless judge at trial certify to entitle plaintiff to costs, or the court make an order for plaintiff to have costs.

XII. Where the debt or damage claimed in any action shall not exceed the sum of fifty pounds, no plea to the jurisdiction shall be allowed, provided the defendant or one of the defendants, shall dwell or carry on business within the city of London or the liberties thereof at the time of the action brought, or provided the defendant or one of the defendants shall have dwelt or carried on business at some time within six months next before the time of the action brought, or if the cause of action, either wholly or in part, arose therein.

Where debt does not exceed 50*l.* no plea to jurisdiction allowed in certain cases herein stated.

XIII. The court may, if it shall think fit, in any case, when it shall satisfactorily appear by affidavit that the cause of action arises within the jurisdiction of the court, order that the plaintiff may be served in any part of England or Wales; and the service of any plaintiff in pursuance of such order shall be as valid and effectual as if the same had been served within the jurisdiction of the court, provided that a copy of such order shall be served at the time of the service of the plaintiff.

Court may order that the plaintiff may be served in any part of England or Wales.

XIV. In all cases where an order of the court shall be made under the last preceding section, all the proceedings in the cause shall be had and taken as if the defendant had been duly served with the plaintiff within the jurisdiction.

All further proceedings to be had as usual.

XV. No defendant shall be permitted to object to the jurisdiction of the court in or by any proceeding whatsoever, except by plea.

Objection to jurisdiction to be by plea.

XVI. No cause depending in the Mayor's Court in which the debt or damages sought to be recovered shall not exceed fifty pounds shall be removed by any defendant, before judgment therein, into any superior court, except in pursuance of a judge's order as hereinafter mentioned, unless the defendant, with two sufficient sureties, such as the Mayor's Court shall allow, shall first be bound to the plaintiff in the cause by recognizance, to be acknowledged in the Mayor's Court, in a sufficient sum for the payment of the debt or damages and costs, in case judgment shall pass against the defendant in the superior court, or in case the cause shall be brought back by *Procedendo* in the Mayor's Court: Provided always, that any judge of any of the superior courts may in the exercise of his discretion order a writ of *Certiorari* to issue to remove any such cause depending in the Mayor's Court into any superior court, without such recognizance as aforesaid, and such cause may be removed into such superior court accordingly.

Causes under 50*l.* not to be removed, except by judge's order or on security.

Writ to remove causes to be lodged within one month after service of plaintiff.

XVII. No cause depending in the Mayor's Court shall be removed before judgment therein into any superior court, unless the writ removing such cause shall have been lodged with the proper officer of the court within one month after the service of the plaint, or unless such writ shall have been lodged with such officer before such action shall have been entered for trial according to the practice of the Mayor's Court.

Foreign attachment not to be removed after set down for trial, except by express directions of judge, upon terms.

XVIII. No foreign attachment shall be removed from the Mayor's Court at any time after the same shall be set down for trial, except by the express order of one of the judges of the superior courts; and then upon such terms, as to costs, bail, or payment of money into the court, as such judge on summons shall think fit; provided that a summons only, without any order of the judge thereon, shall not stay the trial of the attachment in the Mayor's Court.

No cause to be removed into superior court except by leave of judge, and upon certain terms.

XIX. No cause depending in the court shall, before judgment be recovered, be removable into any of the superior courts (after plea pleaded), unless by leave of a judge of one of the said superior courts, in cases which shall appear to such judge fit to be tried in one of the superior courts, and upon such terms (if any) as to payment of costs, giving security for debt and costs, or damages and costs, or such other terms as he shall think fit, upon summons.

No suit on equity side of court to be removed unless by special direction of judge.

XX. No suit commenced on the equity side of the Mayor's Court shall be removed from out of the said court into Chancery without the special order of the Lord High Chancellor, the Master of the Rolls, or one of the Vice Chancellors, upon application for that purpose made; and no cause shall be so removed from out of the said equity side of the Mayor's Court if the judge to whom such application shall be made shall consider that the matter in question in the said suit is fit to be tried in the Mayor's Court: And the said Master of the Rolls shall have power from time to time to make rules and regulations respecting the removal of such suits as aforesaid.

Power of court to compel parties to allow inspection of documents, and also copies to be taken.

XXI. In any action or other legal proceeding in the court, the court may, on application made for such purpose by either party, compel the opposite party to allow the party making the application to inspect all documents in the custody or power or under the control of such opposite party relating to such action or other legal proceeding, and, if necessary, to take examined copies of the same, or to procure the same to be duly stamped, in all cases in which, previous to the passing of this Act, a discovery might have been obtained by filing a bill, or by any other proceeding in a court of equity, at the instance of the party so making application as aforesaid to the court.

Power to the judge, within the jurisdiction, to hear and determine motions, &c.

XXII. The Judge of the court may at any time, within the jurisdiction of the court, hear and grant applications for rules to show cause in arrest of judgment, or for judgment *Non obstante veredicto*, or for a repleader, or for granting new trials, and for entering nonsuits and verdicts in causes pending in the court.

Power to court to amend errors.

XXIII. It shall be lawful for the court at all times to amend all defects and errors in any proceeding, whether there is anything in writing to amend by or not; and whether the defect or error be that of the party applying to amend or not; and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made; and all such amendments may be made with or without costs, or upon such terms as to the court may seem fit.

Depositions of witnesses may be taken.

XXIV. The court may in any action, upon the application of any of the parties thereto, order the examination on oath, upon interrogatories or otherwise, before the Registrar or other person or persons to be named, in such order, of any witness or witnesses in any part of England and Wales, and by the same or any subsequent order or orders may give all such directions touching the time, place, and manner of examination, and all other matters and circumstances connected with such examination, as may appear reasonable and just.

As to compelling attendances of witnesses.

XXV. When any such order shall be made, the court may, in and by the first or any subsequent order, command the attendance of any person to be named in such order for the purpose of being examined, or the production

of any writing or other document to be mentioned in such order, and may direct the attendance of any such person to be at his own place of abode, or elsewhere, if necessary or convenient so to do; and the party at whose instance such order may have been made and issued shall have all the same remedies against such person, in case of non-attendance, as he would have against any person for non-attendance in obedience to any writ of *Subpoena ad testificandum* duly served according to the practice of the court: Provided that, in addition to the service of the order, an appointment of the time and place of attendance in obedience thereto, signed by the person or persons appointed to take the examination, or by one or more of such persons, shall be so served, together with or after the service of such order; provided also, that every person whose attendance shall be so required shall be entitled to the like conduct money, and payment for expenses and loss of time, as upon attendance at a trial; provided also, that no person shall be compelled to produce under any such order any writing or other document that he would not be compellable to produce at a trial of the cause.

production of documents, &c.

XXVI. Upon the application of any of the parties to any action depending in the court, the court may order a commission to issue for the examination of witnesses upon oath at any place or places beyond the limits of England and Wales, by interrogatories or otherwise, and by the same or any subsequent order or orders may give all such directions touching the time, place, and manner of such examination, and all other matters and circumstances connected with such examination, as may appear reasonable and just.

Commission may be issued by judge of the court to examine witnesses abroad.

XXVII. Any sheriff, gaoler, or other officer having the custody of any prison may take such prisoner for examination at the place or places named in any such order, by virtue of a writ of *Habeas corpus* to be issued for that purpose, which writ shall and may be issued by any judge under such circumstances and in such manner as such judge may now by law issue the writ commonly called a writ of *Habeas corpus ad testificandum*.

Examination of prisoners.

XXVIII. The person or persons authorized to take the examination of witnesses by any such rule, order, writ, or commission as herein mentioned shall and may take all such examinations upon the oath of the witnesses, to be administered by the person so authorized; and if upon such oath any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall and may be indicted and prosecuted for such offence in the county where such evidence shall be given, or in the county of Middlesex if the evidence be given out of England.

Examination of witnesses to be taken upon oath.

XXIX. The Registrar, or any other person named in any such rule or order to take any examination in pursuance thereof, may and he is hereby required to make, if need be, a special report to the court touching such examination, and the conduct or absence of any witness or other person thereon or relating thereto; and the court is hereby authorized to institute such proceedings and make such order and orders upon such report as justice may require, and as may be instituted and made in any case of contempt of court.

The person appointed for taking examinations may report to the court.

XXX. The costs of every rule or order to be made for the examination of witnesses by virtue of the provisions herein contained, and of the proceedings thereupon, shall be costs in the cause, unless otherwise directed either by the judge of the superior court making such order or by the court.

Costs of order and proceedings.

XXXI. No examination or deposition to be taken by virtue of the provisions herein contained shall be read in evidence without the consent of the party against whom the same may be offered, unless it shall appear to the satisfaction of the court that the examinant or deponent is not in England or Wales, or is dead, or unable from permanent sickness or other permanent infirmity to attend the trial, in all or any of which cases the examinations and depositions, certified under the hand of the commissioner, registrar, or other person taking the same, shall and may, without proof of the signature to such certificate, be received and read in evidence, saving all just exceptions.

Restrictions as to reading depositions.

Interpleader by defendant in action. XXXII. Upon application made by or on behalf of any defendant in any action in the court, such application being made after declaration, and before plea, by affidavit or otherwise, showing that such defendant does not claim any interest in the subject matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same, and that such defendant does not in any manner collude with such third party, but is ready to bring into court or to pay or dispose of the subject matter of the action in such a manner as the court may order or direct, it shall be lawful for the Registrar to issue a summons calling upon such third party to appear in court, and to state the nature and particulars of his claim, and to maintain or relinquish his claim; which summons may be served upon such third party in any part of England or Wales; and upon such summons the court may hear the allegations as well of such third party as of the plaintiff, and in the meantime stay the proceedings in such action, and finally order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more issues or issues, and also direct which of the parties shall be plaintiff or defendant on such trial, or, with the consent of the plaintiff and such third party, their counsel or attorneys, dispose of the merits of their claims, and determine the same in a summary manner, and make such rules and orders therein, as to costs and all other matters, as may appear to be just and reasonable.

Judgment and decision final. XXXIII. The judgment in any such action or issue as may be decreed by the court, and the decision of the court in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from, or under them.

Claim of party not appearing barred. XXXIV. If such third party shall not appear upon such summons to maintain or relinquish the claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the court to declare such third party, and all persons claiming by, from, or under him, to be for ever barred from prosecuting his claim against the original defendant, his executors or administrators, saving nevertheless the right or claim of such third party against the plaintiff, and thereupon to make such order between such defendant and the plaintiff, as to costs and other matters, as may appear just and reasonable.

For relief of Serjeant-at-mace in execution of process against goods. XXXV. When any claim shall be made to or in respect of any goods or chattels taken or intended to be taken in execution under the process of the court, or to or in respect of the proceeds or value thereof, by any landlord, for rent, or by any person not being the party against whom such process has issued, it shall be lawful to and for the Registrar, upon application of the Serjeant-at-mace or any of his officers made before or after the return of such process, and as well before as after any action brought against such Serjeant-at-mace or any of his officers, to issue a summons calling before the court as well the party issuing such process as the party making such claim; and thereupon any action which shall have been brought in any of the superior courts, or in any local or inferior court of record, in respect of such claim, shall be stayed; and the court in which such action shall have been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons; and the said court shall thereupon exercise, for the adjustment of such claim, and the relief and protection of the said Serjeant-at-mace or any of his officers, all or any of the powers and authorities hereinbefore contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case; and the costs of all such proceedings shall be in the discretion of the court.

[§§ XXXVI. to XL., inclusive, relate to judgment summonses for debts of £20 and under, are now practically repealed or rendered useless by the Debtors Act 1869.]

Registrar of Mayor's Court may hold courts. XLI. The Registrar of the court may, in the absence of the Judge, hold the court and transact all the business of the court, except the trial of issues in law or in fact.

XLII. The Debtors Prison for the city of London shall be the prison wherein all persons committed into custody under any process or proceeding of the Mayor's Court shall be confined; and the keeper for the time being of the said Debtors Prison shall and he is hereby required to receive and take into his custody every person who shall be committed or ordered to stand committed by the court; and in case the keeper of the said prison shall neglect or refuse to receive or take into his custody any person committed by the court, or shall, before the expiration of the time for which any person shall be committed to his custody, discharge such person out of his custody, and wilfully suffer such person to go at large, without a warrant or order for that purpose in writing, signed by the plaintiff or by the court (or by some other court of competent authority), such keeper so offending in either of the said cases shall pay to the plaintiff at whose suit such person was in custody respectively the debt or debt and costs for which such person shall have been committed to the custody of such keeper, and also any sum not exceeding twenty pounds at the discretion of the court.

Debtors
Prison of city
of London to
be the prison
of the court.

XLIII. In the absence of the Recorder the Common Serjeant for the time being of the city of London may preside as judge in the Mayor's Court; and in case of illness or unavoidable absence of either the said recorder or common serjeant, it shall be lawful for them or either of them, or, in case of their inability to make such appointment, for the Mayor, Aldermen, and Commons of the city of London in Common Council assembled, to appoint some other person who shall have practised as a barrister-at-law for at least seven years, to act as a deputy of such judge in the said court during such illness or unavoidable absence; and it shall also be lawful for the said recorder or common serjeant, or either of them, to appoint a deputy who shall have practised as a barrister for at least seven years to act for either of them in the said court, for any time or times not exceeding in the whole two months in any consecutive period of twelve months; and every deputy so appointed during the time for which he shall be so appointed shall have all the powers and privileges and perform all the duties of a judge of the said court.

If Recorder
is absent
Common
Serjeant may
preside.

XLIV. It shall be lawful for any judge of the Mayor's Court, either in or out of court, to administer oaths and take declarations for the purpose of authenticating any documents which may be required to be produced in any foreign country or in any place out of the jurisdiction of the court.

Judge to ad-
minister oath
to authenti-
cate docu-
ments.

XLV. It shall be lawful for the court from time to time to make, alter, and revoke rules, orders, and regulations required for and in respect of the offices of the Mayor's Court, and the nature, duties, fees, and emoluments attaching to the respective officers; and from time to time to make, alter and revoke rules for regulating the practice and pleading, and the taking of oral evidence, in the court, and the fees to be taken on the proceedings in the said court, and the forms relating thereto, both in law and equity, as shall from time to time to it seem necessary and proper: Provided always, that such rules and forms, and any order for revoking or altering the same, shall be signed by the Judge of the said court, and that no such rules, orders, or forms shall be of any force until they shall have been allowed and confirmed by three of the judges of the superior courts; and it shall be lawful for the judges of the superior courts from time to time to make such rules, orders, and regulations as they may think fit for carrying into execution the provisions of this Act relative to the removal of causes from the Mayor's Court to the superior courts.

Judge may
make and
alter rules,
to be con-
firmed by
Judges of
superior
court.

XLVI. It shall be lawful for Her Majesty from time to time, by an Order in Council, to direct that all or any part of the provisions of any Act for the amendment of the law, now passed or hereafter to be passed, and also all or any of the rules and regulations made in pursuance thereof, shall extend to and apply to the Mayor's Court; and, within one month after such order shall have been made and published in the London Gazette, such provisions and rules respectively, or parts thereof (and the forms necessary in respect thereof), shall extend and apply in manner directed by such Order; and any such Order may be in like manner altered and annulled; and in and by any such Order Her Majesty may direct by whom any such powers or duties incident to the said provisions, applied under the said several Acts and rules in respect thereof, shall and may be exercised with respect to the matters in such court, and may make any order, regulation, or form which may be deemed requisite for carrying into operation in such court the provisions so applied.

Power to Her
Majesty to
direct provisions
of any Act for
amendment of
the law, and
rules framed
in pursuance
thereof, to
apply to the
Mayor's
Court.

Power to judge to direct attachment to be tried in Mayor's Court.

XLVII. In any case where a garnishee may appear before a judge under the "Common Law Procedure Act 1854," and dispute his liability, the judge may order that an issue shall be tried in the said Mayor's Court, in such manner and form as the judge shall direct, and such proceedings shall be had therein as if the same question had been tried in the superior courts.

For removal of judgments into superior court.

XLVIII. In every case where final judgment shall have been obtained in the Mayor's Court, and also in every case where any rule or order shall have been made by the court, whereby any sum of money, or any costs, charges, or expenses shall be payable to any person, any writ of execution upon such judgment, or any rule or order so made by the court, shall be sealed by the sealer of writs of any of the superior courts, upon a precept of the same being lodged with him, together with an affidavit verifying the judgment or order, and that the same remains unreversed and unsatisfied, and immediately thereupon such writ of execution and such judgment, rule, or order shall become and be of the same force, charge, and effect as a writ of execution or judgment recovered in or a rule or order made by such superior court, and all the reasonable costs and charges attendant upon such sealing shall be recovered in like manner as if the same were part of such judgment or rule or order: Provided always, that no such judgment or rule or order when so removed as aforesaid shall affect any lands, tenements, or hereditaments as to purchasers, mortgagees, or creditors, any further than the same would have done if the same had remained a judgment, rule, or order of the Mayor's Court, unless and until a writ of execution thereon shall be actually put into the hands of the sheriff or other officer appointed to execute the same.

Fines on jurors for non-attendance.

XLIX. If any juror having been duly summoned shall not attend in pursuance of such summons, or, after his appearance, shall wilfully withdraw himself from the presence of the court, the court shall impose such fine upon every juror so making default, unless some reasonable excuse shall be proved to the satisfaction of the court, as the court shall think meet, not exceeding five pounds; and in case of non-payment of such fine according to the directions of the court, the same may be levied in such manner as is provided for the levying of fines imposed upon common jurors for any similar default, under the provisions of 5 and 6 Will. IV., cap. 76, sec 121.

Court may issue process to compel the attendance of witnesses, although not within its jurisdiction.

L. If in any action or suit now or at any time hereafter depending in the court, it shall appear to the court, or if the court is not sitting to the Judge thereof, that it is proper to compel the personal attendance at any trial of any witness who may not be within the jurisdiction of the court, it shall be lawful for the court or judge, if in their or his discretion it shall so seem fit, to order that a writ, called a writ of *Subpoena ad testificandum*, or of *Subpoena duces tecum*, or warrant of citation, shall issue in special form, commanding such witness to attend such trial or process wherever he shall be within the United Kingdom, and the service of any such writ or process in any part of the United Kingdom shall be valid and effectual.

Judge may by consent try questions of fact.

LI. The parties in any cause may by consent in writing signed by them or by their respective attorneys, leave the decision of any issue of fact to the court, provided that the court shall in their or his discretion think fit to allow such trial; or provided the judges of the superior courts shall in pursuance of the power vested in them by law for such purpose make any general rule or order dispensing with such allowance, either in all cases or in any particular class or classes of cases, to be defined by such rule or order; and such issue of fact may thereupon be tried and determined, and damages awarded where necessary, in open court by the judge who might otherwise have presided at the trial thereof by jury; and the verdict of such judge shall be of the same effect as the verdict of a jury, save that it shall not be questioned upon the ground of being against the weight of evidence; and the proceedings upon and after such trial, as to the power of the court or judge, the evidence and otherwise, shall be the same as in the case of trial by jury.

No cause to be removed except by Certiorari, or judge's order.

LII. No cause shall be removable from the court otherwise than by a writ of *Certiorari*, or by the order of a judge of one of the superior courts, or by the special order of the Lord High Chancellor, the Master of the Rolls, or one of the Vice-Chancellors, and every writ of *Certiorari* shall be made returnable immediately, whether in or out of term.

LIII. Every person who is legally entitled to any franchise or office in either of the Sheriffs' courts, whose office shall be abolished, or whose office shall be deprived of any emolument by this Act, shall be entitled to make a claim for compensation to the Mayor, Aldermen, and Commons of the city of London in Common Council assembled, within six months after the commencement of this Act; and it shall be lawful for the said mayor, aldermen, and commons, in such manner as they shall see fit, to inquire what was the nature of the office, and what was the tenure thereof, and what were the lawful fees and emoluments in respect of which such compensation shall be claimed; and the said mayor, aldermen, and commons shall in each case award such gross or yearly sum, and for such time, as they shall think just under the circumstances of each case, subject to the approval of the Lords Commissioners of Her Majesty's Treasury; and all compensation, when so awarded, shall be paid by the said mayor, aldermen, and commons out of the funds of the said city.

Compensation to officers of abolished court, &c.

LIV. In this Act the following words and expressions shall have the several meanings hereby assigned to them (unless there be something in the subject or context repugnant to such construction) that is to say,—

Interpretation of terms.

The word "person" shall include corporations, whether aggregate or sole:

The words "the Mayor's Court," or "the court," shall mean the Court of our Lady the Queen holden before the Lord Mayor and Aldermen in the Chamber of the Guildhall of the city of London:

The words "the Judges" shall mean the Judge of the Mayor's Court, or the person authorized to sit or sitting as judge therein:

The words "the superior courts" shall mean Her Majesty's superior courts of common law at Westminster:

The words "the Registrar" shall mean the Registrar of the Mayor's Court, and shall include the deputy of such Registrar, or the person appointed to perform or performing the duties of Registrar:

LV. The costs of and relating to the passing of this Act shall be paid out of the fees of the court.

Expenses of Act.

SCHEDULES referred to by the foregoing Act.

See note § 86. SCHEDULES (A.) (B.) (C.)

SCHEDULE (D.)

In the Mayor's Court, London.

_____ against _____

Sir,—Take notice, that I shall attend at the offices of the court, situate _____ on _____ at _____ o'clock, to sign judgment against you herein. And further take notice, I shall at the same time apply for an order for the payment by you of the said debt by instalments, or such other order as the court may think fit to make herein. Yours, &c.

Plaintiff's Attorney.

To Mr. _____
the abovenamed Defendant.

No. 2.

ORDER OF THE QUEEN IN COUNCIL.

London Gazette, 20th November, 1868.

At the Court at Windsor, the 17th day of November, 1868.

WHEREAS by the Common Law Procedure Act 1852, it is enacted that it shall be lawful for Her Majesty, from time to time, by an Order in Council, to direct that all or any part of the provisions of the said Act, or any of the rules to be made in pursuance thereof, shall apply to all or any court or courts of record in England or Wales; and that within one month after such Order shall have been made and published in the London Gazette such provisions and rules respectively shall extend and apply in manner directed by such Order, and that any such Order may be in like manner from time to time altered or annulled: And whereas by the Common Law Procedure Act 1854, it is also enacted that it shall be lawful for Her Majesty, from time to time, by an Order in Council, to direct that all or any part of the provisions of that Act, or of the rules to be made in pursuance thereof, shall apply to all or any court or courts of record in England and Wales, and that within one month after such Order shall have been made and published in the London Gazette, such provisions and rules respectively shall extend and apply in manner directed by such Order, and that any such Order may be in like manner from time to time altered or annulled; and that in and by any such Order Her Majesty may direct by whom any powers or duties incident to the provisions applied under the same Act, or the Common Law Procedure Act 1852, shall and may be exercised with respect to matters in such court or courts, and may make any orders or regulations which may be deemed requisite for carrying into operation in such court or courts the provisions so applied.

And whereas by the Summary Procedure on Bills of Exchange Act 1855, it is also enacted, that it shall be lawful for Her Majesty, from time to time, by an Order in Council, to direct that all or any of the provisions of that Act shall apply to all or any court or courts of record in England or Wales; and that within one month after such Order shall have been made and published in the London Gazette, such provisions shall extend and apply in manner directed by such Order, and that any such Order may be in like manner from time to time altered or annulled; and that in and by such Order Her Majesty may direct by whom any powers or duties incident to the provisions applied under the same Act shall or may be exercised with respect to matters in such court or courts, and may make any orders or regulations which may be deemed requisite for carrying into operation in such court or courts the provisions so applied:

And whereas by the Common Law Procedure Act 1860, it is also enacted that it shall be lawful for Her Majesty, from time to time, by an Order in Council, to direct that all or any part of the provisions of that Act shall apply to all or any court or courts of record in England or Wales, and that within one month after such Order shall have been made and published in the London Gazette, such provisions and rules respectively shall extend and apply in manner directed by such Order, and that any such Order may be in like manner from time to time altered and annulled; and that in and by any such Order Her Majesty may direct by whom any powers or duties incident to the provisions applied under that Act shall and may be exercised with respect to matters in such court or courts, and may make any order or regulations which may be deemed requisite for carrying into operation in such court or courts the provisions so applied:

And whereas by the Mayor's Court of London Procedure Act 1857, it is enacted that it shall be lawful for Her Majesty, from time to time, by an Order in Council, to direct that all or any part of the provisions of any Act for the amendment of the law then passed or thereafter to be passed, and

also all or any of the rules and regulations made in pursuance thereof, shall extend and apply to the Court of Record of Her Majesty, holden before the Mayor and Aldermen in the Chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London, and that within one month after such Order shall have been made and published in the London Gazette, such provisions and rules respectively or parts thereof (and the forms necessary in respect thereof), shall extend and apply in manner directed by such Order, and that any such Order may be in like manner altered and annulled; and that in and by any such Order Her Majesty may direct by whom any such powers or duties incident to the said provisions applied under the several Acts and rules in respect thereof shall and may be exercised with respect to the matters in such court, and may make any order, regulation, or form which may be deemed requisite for carrying into operation in such court the provisions so applied:

And whereas it has seemed fit to Her Majesty, by and with the advice of Her Majesty's Privy Council, that such of the provisions of the said several hereinbefore-mentioned Acts, as are hereinafter respectively in that behalf mentioned, shall be extended and applied to the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the Chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London:

Now, therefore, Her Majesty, by and with the advice aforesaid, is pleased to order, and it is hereby ordered, that within one month after this Order shall have been published in the London Gazette such of the provisions of the said Common Law Procedure Act 1852, with respect to writs for the commencement of personal actions, as are contained in the sections numbered respectively 3, 7, 16, and 17, in the copy of the said Act printed by Her Majesty's Printer; and such of the provisions of the same Act, with respect to the appearance of the defendant, and proceedings of the plaintiff in default of appearance, as are contained in the sections numbered respectively 32 and 33, in the copy of the said Act printed by Her Majesty's Printer; and such of the provisions of the same Act, with respect to the joinder of parties to actions as are contained in the sections numbered respectively 34, 35, 36, 37, 38, 39, and 40, in the copy of the said Act printed by Her Majesty's Printer; and the provisions of the same Act with respect to the joinder of causes of action contained in the section numbered 41, in the copy of the said Act printed by Her Majesty's Printer; and such of the provisions of the same Act, with respect to the determination of questions raised by the consent of the parties, without pleading, as are contained in the sections numbered respectively 42, 43, 44, 45, 46, 47, and 48, in the copy of the said Act printed by Her Majesty's Printer; and such of the provisions of the same Act, with respect to the language and form of pleadings in general, as are contained in the sections numbered respectively 49, 50, 51, 52, 53, 54, 55, 56, and 57, in the copy of the said Act printed by Her Majesty's Printer, shall extend and apply to the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the Chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London, and that all the said sections hereinbefore mentioned shall be read as if the word "plaint" had been used therein, instead of the words "writ of summons" or "writ." And that such of the provisions of the same Act, with respect to the time and manner of declaring, as are contained in the sections numbered respectively 60 and 61, in the copy of the same Act printed by Her Majesty's Printer; and such of the provisions of the same Act, with respect to pleas and subsequent pleadings, as are contained in the sections numbered respectively 64, 65, 66, 67, 68, 69, 70, 71, 74, 75, 76, 77, 78, 79, 80, 87, 88, and 89, in the copy of the same Act printed by Her Majesty's Printer; and such of the provisions of the same Act, with respect to the statement of causes of action and forms of pleading, contained in the 91st section, and the schedules A and B of the copy of the same Act printed by Her Majesty's Printer (except the forms numbered respectively 1, 2, 3, 4, and 5, in the said schedule A), shall also extend and apply to the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the Chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London, and that the said section numbered 69 shall be read as if the words "and such plea may when necessary be pleaded at Nisi prius between the

"10th day of August and 24th of October," had not been inserted therein. And that such of the provisions of the same Act, with respect to judgment by default and the mode of ascertaining the amount to be recovered thereupon, as are contained in the sections numbered respectively 94, 95, and 96, in the copy of the said Act printed by Her Majesty's Printer; and such of the provisions of the same Act, with respect to the admission of documents, as are contained in the sections numbered respectively 117, 118, and 119, in the copy of the said Act printed by Her Majesty's Printer; and such of the provisions of the same Act, with respect to execution, as are contained in the sections numbered respectively 123, 124, 125, and 126, in the copy of the said Act printed by Her Majesty's Printer; and such of the provisions of the same Act, with respect to proceedings for the revival of judgments and other proceedings by and against persons not parties on the record, as are contained in the sections numbered respectively 128, 129, 130, 131, 132, 133, and 134, in the copy of the said Act printed by Her Majesty's Printer; and such of the provisions of the same Act, with respect to the effect of death, marriage, and bankruptcy upon the proceedings in an action, as are contained in the sections numbered respectively 135, 136, 137, 138, 139, 140, 141, 142, in the copy of the said Act printed by Her Majesty's Printer; and all the provisions of the same Act, with respect to the proceedings upon motions in arrest of judgment, and for judgment *non obstante veredicto*, which are contained in the sections numbered respectively 143, 144, and 145, in the copy of the said Act printed by Her Majesty's Printer (except such part of the said section numbered 143 as relates to a motion in arrest of judgment pursuant to the statute of the first year of the reign of King William the Fourth, chapter seven), and all the provisions of the same Act, contained in the sections numbered respectively 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, and 167, in the copy of the said Act printed by Her Majesty's Printer; and such of the provisions of the same Act, with respect to actions of ejectment, as are contained in the sections numbered respectively 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 218, 219, 220, and 221, in the copy of the said Act printed by Her Majesty's Printer; so far as such provisions extend, or are or may be applicable to an action of ejectment between landlord and tenant, shall also extend and apply to the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the Chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London; and that the provisions of the same Act, with respect to the power to make rules and regulations, and to frame writs and proceedings for the purpose of carrying the same Act into effect, which are contained in the sections numbered respectively 223, 224, and 225, in the said copy of the Act printed by Her Majesty's Printer, shall also extend and apply to the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the Chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London; and the powers thereby conferred shall and may be exercised, so far as may apply to the said court, by the Judge thereof. And that the provision of the same Act, with respect to the effect of injunctions and orders to stay proceedings, contained in the 226th section of the copy of the said Act printed by Her Majesty's Printer, shall also extend and apply to injunctions, rules, and orders of the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the Chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London, or the Judge thereof.

And Her Majesty is further pleased, by and with the advice aforesaid, to order, and it is hereby further ordered, that all the provisions of the Common Law Procedure Act 1854 (save only and except such as are contained in the sections numbered respectively 2, 35, 36, 37, 38, 39, 40, 42, 43, 76, 77, 95, 99, 100, 101, 102, 104, 105, 106, and 107, in the copy of that Act printed by Her Majesty's Printer), shall extend and apply to the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the Chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London.

And Her Majesty is further pleased, by and with the advice aforesaid, to order, and it is hereby further ordered, that all the provisions of the Summary Procedure on Bills of Exchange Act 1855 (save only and except such as are contained in the sections numbered respectively 8, 9, and 10, in the copy of that Act printed by Her Majesty's Printer), shall extend and apply to the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the Chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London. And that the said several sections and the schedules to the said last-mentioned Act shall be read as if the word "plaint" had been used therein, instead of the words "writ of summons" or "writ," and that all the powers and duties exercisable by "the Court" or "a Judge," shall, as regard matters and proceedings in the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the Chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London, be exercisable and exercised by the said court or the judge thereof; and that all the powers and duties exercisable by the Masters of the superior courts, or any three of them, under the first section of the said last mentioned Act, shall, as regards matters and proceedings in the said court of Record of Her Majesty, holden before the Mayor and Aldermen in the Chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London, be exercisable and exercised by the Registrar of the said court, subject to the approval of the Judge thereof.

And Her Majesty is further pleased, by and with the advice aforesaid, to order, and it is hereby further ordered, that all the powers and provisions of the Common Law Procedure Act 1860 (save and except such as are contained in the sections numbered respectively 22, 23, 24, 25, 26, 27, 40, 41, 42, 43, 44, 45, and 46, in the copy of that Act printed by Her Majesty's Printer), shall extend and apply to the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the Chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London.

And Her Majesty is further pleased, by and with the advice aforesaid, to order, and it is hereby further ordered, that the powers and provisions of the Act of Parliament, passed in the session of Parliament holden in the 8th and 9th years of Her Majesty's reign, intituled "An Act for the better securing the payment of small debts" (a), contained in the section of the same Act numbered one in the copy thereof printed by Her Majesty's Printer (so far only as relates to summoning, hearing and making any order, or committing, as therein specified), and also the powers and provisions contained in the sections of the same Act, numbered 3 and 18 in the copy thereof printed by Her Majesty's Printer, and the powers and duties incident to such provisions respectively shall be exercised by the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the Chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London, as the said court is constituted or allowed to be holden under the said "Mayor's Court of London Procedure Act 1857," and that the forms to be used thereunder shall be the same as those which are contained in the schedules A, B, and C respectively in the said "Mayor's Court of London Procedure Act 1857."

And Her Majesty is further pleased, by and with the advice aforesaid, to order, and it is hereby further ordered, that the provisions of the Act of Parliament made and passed in the second year of the reign of His late Majesty King William the Fourth, intituled "An Act for uniformity of process in personal actions in His Majesty's Courts of Law at Westminster" (b), which are contained in the section numbered one of the copy thereof printed by Her Majesty's Printer, so far as such provisions relate to the process of the said courts being served within two hundred yards of the border of any county, shall extend and apply to the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the Chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London.

(a) See The Debtors Act 1869, altering these provisions.

(b) This Act is repealed by The Bankruptcy Repeal and Insolvent Court Act 1869.

And Her Majesty is further pleased, by and with the advice aforesaid, to order, and it is hereby further ordered, that all the powers and provisions of the Act of Parliament, made and passed in the Session of Parliament, holden in the twenty-fourth year of the reign of Her Majesty, intituled "An Act to afford facilities for better ascertaining the law of Foreign Countries, when pleaded in courts within Her Majesty's Dominions," which are contained in the sections numbered 1 and 2 respectively, in the copy of that Act printed by Her Majesty's Printer, shall extend and apply to the Court of Record of Her Majesty, holden before the Mayor and Aldermen in the Chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London.

And Her Majesty is further pleased, by and with the advice aforesaid, to order, and it is hereby further ordered, that all the powers and duties exercisable by the "Court" or a "Judge," or any number of Judges, under any of the sections of the several hereinbefore-mentioned Acts, which are hereinbefore directed to apply to the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the Chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London, shall, as regards matters and proceedings in the said last-mentioned court, be exercised or exercisable by the court, as directed to be held by the "Mayor's Court of London Procedure Act 1857," and that all the powers and duties exercisable by the Master of the superior courts, or any number of them, under any of the aforesaid sections of the said several Acts, shall, as regards matters and proceedings in the said court of Record of Her Majesty, holden before the Mayor and Aldermen in the Chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London, be exercised and exercisable by the Registrar, or his Deputy, of the said court, subject to the approval of the said court, and that the duties exercisable by the Sheriff or Bailiff, shall, as regards matters and proceedings in the said last-mentioned court of London, be exercised and exercisable by the Serjeant-at-mace of the same court, or his Deputy.

No. 3

GENERAL RULE.

As to Plea of *Nunquam indebtedatus* to Count of
Concessit solvere.

THAT the Plea of Never was indebted shall be used in the said court to the customary count *Sur concessit solvere*, and will operate as a denial of those matters of fact from which the liability of the defendant arises (*exempli gratia*, in actions for goods bargained and sold, or sold and delivered, the plea will operate as a denial of the bargain and sale, or sale and delivery, in point of fact. In the like action for money had and received, it will operate as a denial both of the receipt of the money and the existence of those facts which make such receipt by the defendant a receipt to the use of the plaintiff; and, on bills of exchange and promissory notes, the drawing, making, or indorsing or accepting) but if the defence be for other matters, as not presenting or not giving notice of the dishonour, or no consideration, notice thereof must be given of such defence, with the plea, but such defences as bankruptcy, or statute of limitation, &c., must be pleaded.

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